TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922

No. 248

THOS. G. WATKINS, TRUSTEE, ET AL., PETITIONERS,

vs.

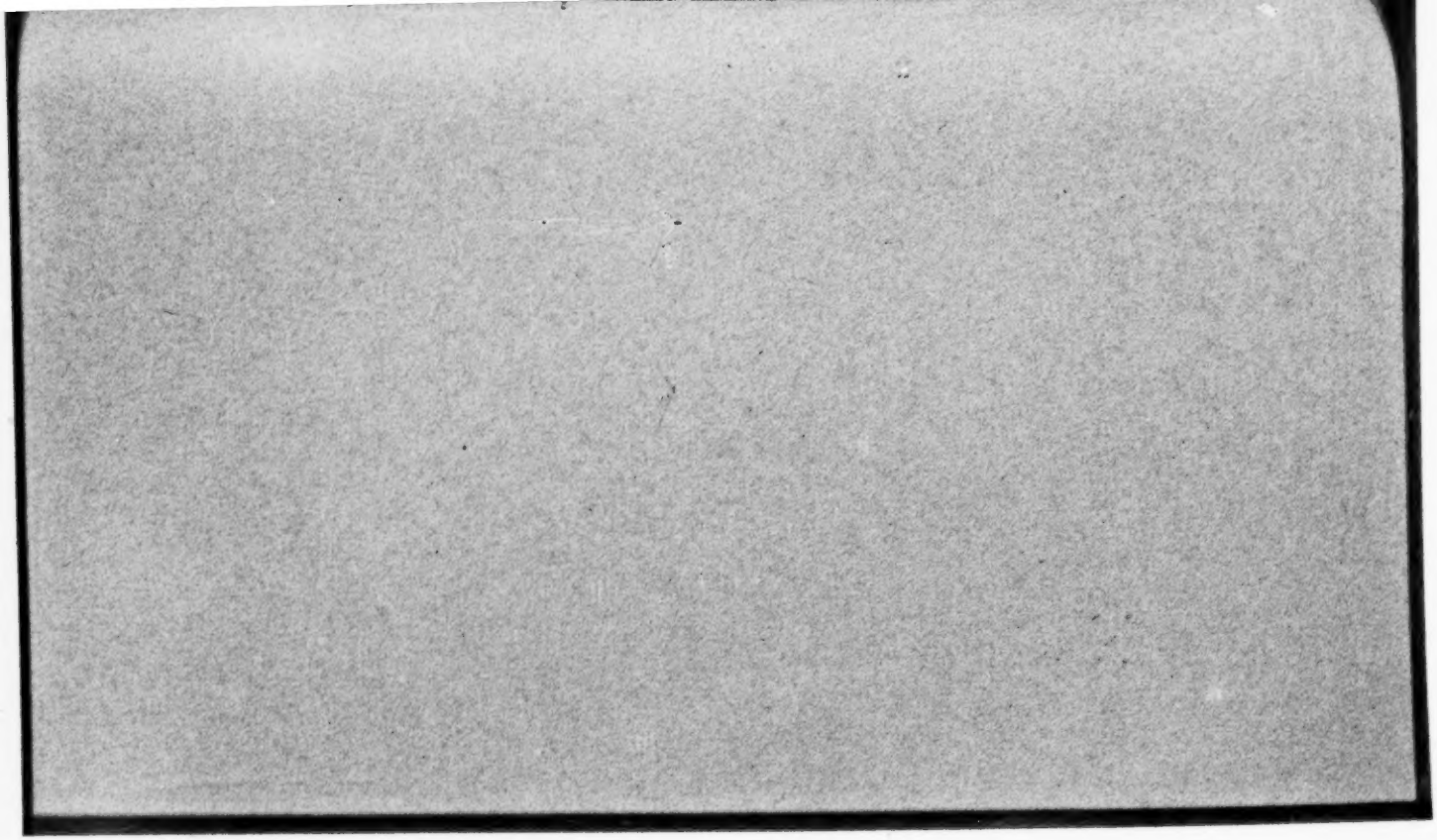
J. H. SEDBERRY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

PETITION FOR CERTIORARI FILED JANUARY 14, 1922.

CERTIORARI AND RETURN FILED FEBRUARY 13, 1922.

(28,645)



(28,645)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 690.

THOS. G. WATKINS, TRUSTEE, ET AL., PETITIONERS,

vs.

J. H. SEDBERRY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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IN THE

District Court of the United States

FOR THE MIDDLE DISTRICT OF TENNESSEE.

In the Matter of J. H. Sedberry, In Bankruptcy. } No. 5206

VOLUNTARY PETITION IN BANKRUPTCY OF J. H. SEDBERRY—Filed Aug. 24, 1917.

To the Honorable Edward T. Sanford, Judge of the District Court of the United States for the Middle District of Tennessee:

The petition of J. H. Sedberry, of Thompson Station, in the County of Williamson, and Middle District and State of Tennessee, farmer, respectfully represents.

That he has resided and had his domicile and principal place of business for the greater portion of six months next immediately preceding the filing of this petition at _____ within said judicial district; that he owes debts which he is unable to pay in full; that he is willing to surrender all his property for the benefit of his creditors except such as is exempt by law, and desires to obtain the benefits of the Acts of Congress relating to bankruptcy.

That the schedule hereto annexed, marked "A" and verified by your petitioner's oath contains a full and true statement of all his debts, and (so far as is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debt, as are required by the provisions of said Acts;

That the schedule hereto annexed, marked "B" and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said Acts;

Wherefore your petitioner prays that he may be adjudged by the Court to be a bankrupt within the purview of said Acts.

J. H. Sedberry,
Petitioner.

J. C. Eggleston,
Attorney.

Voluntary Petition in Bankruptcy of J. H. Sedberry

United States of America, }
Middle District of Tennessee. } ss.

I, J. H. Sedberry, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

J. H. Sedberry,
Petitioner.

Subscribed and sworn to before me this 21st day of August, A. D. 1917.

W. J. Smith,
Notary Public.

(SEAL)
My commission expires July 9th, 1919.

SCHEDULES OF ASSETS AND LIABILITIES—Filed Aug. 24, 1917

OFFICIAL FORM IN BANKRUPTCY — LEE BROCK, Referee, Nashville, T

Form "C"

SCHEDULE A (2).

CREDITORS HOLDING SECURITIES.

N. B.—Particulars of securities held, with date of same, and when they were given, to be st under the names of the several creditors, and also particulars concerning each debt, a quired by Acts of Congress relating to Bankruptcy, and whether contracted as partner or contractor with any other person, and if so, with whom.

This sheet should be signed by the bankrupt at the end of the statement.

Names and Residences of Creditors. If residence unknown, that fact must be stated.	Description of Securities.	When and Where Debts were Contracted.	Value of Securities	Am of D
The Williamson County Banking & Trust Company, Franklin, Tenn.	Mortgage on warehouse and lot, at Thompson Sta., Tenn. the 11th District of Williamson County.	Note executed in 1912 or 1913, at Franklin, Tenn.	$2500 00	200
J. W. Fry, Columbia, Tenn.	Vendor's lien on tract of land in Cannon County, Tenn. under unregistered deed.	Note executed March 19, 1914, Nashville, Tenn.	$1700 00	70
Hume & Cornelius, Attys., Nashville, Tenn		Note executed March 8, 1914, at Nashville		100
Mrs. W. H. Glass, Franklin, Tenn.	Secured by Mrs. Z. C. Sedberry, Trustee, et al., on tract of land in Williamson County.	Note executed about 2½ years ago.		230

J. H. Sedberry,
Petitioner.

1 "D"

SCHEDULE A (3).

CREDITORS WHOSE CLAIMS ARE UNSECURED

B.—When the name and residence (or either) of any drawer, maker, indorser or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.

his sheet should be signed by the bankrupt at the end of statement.

ame and residence of Creditors. If residence unknown that fact must be stated.	When and Where Contracted.	Nature and Consideration of the Debt, and whether any Judgment, Bond, Bill of Exchange, Promissory Note, etc., and whether Contracted as Partner or Joint Contractor with any other person, and if so, whom.	Amount.
e Richardson & Co., Vicksburg, Miss.	Vicksburg, Miss.	Open account	192 52
right Bros., Vicksburg, Miss.	" "	Note	386 00
P. Williams & Co., Vicksburg, Miss.	" "	Judgment	300 00
W. G. Kiger, Eagle Bend, Miss.	Eagle Bend, Miss.	Open account	65 00
S. P. Shelton, Brunswick, Miss.	Brunswick, Miss.	" "	51 00
e Davis, Brunswick, Miss.	" "	" "	15 00
Lochowitz, Eagle Bend, Miss.	Eagle Bend, Miss.	" "	400 00
andard Oil Co., Jackson, Miss.	Jackson, Miss.	Judgment	394 60
andard Oil Co., Memphis, Tenn.	Memphis, Tenn.	"	323 78
T. Cheek & Son, Nashville, Tenn.	Nashville, Tenn.	"	267 35
N. Lunn, Nashville, Tenn.	" "	"	300 00
oadway National Bank, Nashville, Tenn.	" "	Notes disputed, in litigation Chancery Court, at Franklin, Tenn.	7115 00
A. Simpson & Co., Baltimore, Md.	Baltimore, Md.	Open account, disputed	200 00
W. Wood & Son, Richmond, Va.	Richmond, Va.	" " "	500 00
W. Griswold, Nashville, Tenn.	Nashville, Tenn.	Note	100 00
nderson-Hunter Co., Franklin, Tenn.	Franklin, Tenn.	Open account	68 60
emphis Seed & Plant Co., Memphis, Tenn.	Memphis, Tenn.	" "	50 00
Rumley Co., LaPorte, Ind.	LaPorte, Ind.	Notes	2956 00
nn Mercantile Co., Brunswick, Miss.	Brunswick, Miss.	Open account	93 70
Atlee Burpee & Co., Philadelphia, Pa.	Philadelphia, Pa.	" " disputed	25 00
e Illinois Seed Co., Chicago, Ill.	Chicago, Ill.	" " "	15 72
J. Timmons, Thompson Station, Tenn.	Thompson Sta., Tenn.	Judgment, Chancery Court at Franklin, Tenn.	3534 43
B. Veevers, Thompson Station, Tenn.	Thompson Sta., Tenn.	Note	400 00
B. Veevers, Thompson Station, Tenn.	" " "	Open account	456 83
E. Howard & Son, Thompson Station, Tenn.	" " "	" "	50 00

OFFICIAL FORM IN BANKRUPTCY. LEE BROCK, Referee, Nashville, Te

Form "G"

SCHEDULE B (1).

REAL ESTATE

N. B.—This sheet must be signed by the bankrupt at the end of this statement.

Location and Description of all Real Estate Owned by Debtor, or Held by Him.	Incumbrances Thereon, if any, and Dates Thereof.	Estimated Value.
Warehouse and lot, situated in Thompson Station, Tenn., the 11th Civil District.	Mortgage to the Williamson County Bk. & Trust Co. to secure a note of $2000, with interest thereon.	$2500 00
A one-fourth undivided interest in tract of land lying in Cannon County, Tennessee, held by J. H. Sedberry under unregistered deed.	Vendor's lien notes to J. W. Fry and Hume & Cornelius aggregating $1700, with interest thereon.	$1700 00

J. H. Sedberry,
Petition

Schedules of Assets and Liabilities

Official Form in Bankruptcy.
Lee Brock, Referee, Nashville, Tenn.

Form "L."

SCHEDULE B. (5)

A particular statement of the property claimed, as exempted from the operation of the Acts of Congress relating to Bankruptcy, giving each item of property and its valuation; and if any portion of its real estate, its location, description and present use.

N. B.—This sheet must be signed by the debtor at the end of the statement.

Military Uniforms, Arms and Equipments.
None.

Property claimed to be exempted by State laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the State creating the exemption, as follows:

Household and kitchen furniture in home of Mrs. Z. C. Sedberry, Trustee, at Thompson Station, Tennessee (Personal property) being exempted under Section 3794 of Shannon's Code of Tennessee (1896 Ed.).

J. H. Sedberry,
Petitioner.

Lee Brock, Referee, Nashville, Tenn.

FORM "N." Summary of Schedules, with Necessary Oaths to Same.

SCHEDULE "A" LIABILITIES.

Form "B," Schedule "A"—1—Creditors who are to be paid in full, or to whom priority is secured. None.

Form "C," Schedule "A"—2—Creditors holding securities. See Schedule A (2) attached hereto.

Form "D," Schedule "A"—3—Creditors whose claims are unsecured. See Form "D," Schedule "A" —3— attached hereto.

Form "E," Schedule "A"—4—Liabilities on bills discounted which ought to be paid by acceptor. None.

Form "F," Schedule "A"—5—Holders of Accommodation Paper. None.

Schedules of Assets and Liabilities

United States of America, } J. H. Sedberry,
Middle District of Tennessee. } Petitioner.

On this 21 day of August, A. D. 1917, before me, personally came J. H. Sedberry the person mentioned in and who subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his debts, in accordance with the Acts of Congress relating to bankruptcy.

J. H. Sedberry, Petitioner.

Subscribed and sworn to before me, this 21 day of August, A. D. 1917.

W. J. Smith, Notary Public.

(SEAL)

My commission expires July 9th, 1919.

SCHEDULE "B" ASSETS.

Form "G," Schedule "B"—1—Statement of Real Estate in possession, enjoyment or under control of Petitioner. See Schedule B (1) attached hereto.

Form "H," Schedule "B"—2—Statement of Personal Property in possession, etc. Household and kitchen furniture claimed as exempt under B (5).

Form "J," Schedule "B" —3— Statement of Choses in Action in which Petitioner has an interest. None.

Form "K," Schedule "B"—4—Statement of Property in Reversion, etc., including property held in trust. None.

Form "L," Schedule "B"—5—Statement of Property (Real or Personal) claimed as exempt. See Schedule B (1) attached hereto.

Form "M," Schedule "B"—6—Statement of Books, Papers, Deeds, etc., relating to Petitioner's trade or business. None.

United States of America, } J. H. Sedberry,
Middle District of Tennessee. } Petitioner.

On this 21 day of August, A. D. 1917 before me, personally came J. H. Sedberry the person mentioned in and who subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his estate, both real and personal, in

accordance with the Acts of Congress relating to bankruptcy.

J. H. Sedberry, Petitioner.

Subscribed and sworn to before me, this 21 day of August, A. D. 1917.

W. J. Smith, Notary Public.

My commission expires July 9, 1919.
(SEAL)

N. B.— If the petitioner has debts coming under any one or more of the five sub-divisions of Schedule (A), or assets come under any one or more of the six divisions of Schedule (B), the word "NONE" should be erased and the phrase "SEE SCHEDULE (—) HERETO ATTACHED" substituted, thereby avoiding the unnecessary use of blanks in which the word "NONE" would have been written, if used.

ORDER OF REFERENCE—Entered August 24, 1917

Be it remembered that the judge of the court being this day absent from the Nashville Division of the Middle District of Tennessee, the clerk of this court, under the provisions of Section 18 of the Bankruptcy Act referred to Lee Brock, Esq., Referee in Bankruptcy, the petition of James H. Sedberry, No. 5206, for an adjudication in voluntary bankruptcy.

COPY OF RULES OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, IN FORCE SINCE 1912.

"43.

"PRACTICE IN BANKRUPTCY PROCEEDINGS.

"Except as otherwise provided by the Bankruptcy Act, the General Orders and Forms in Bankruptcy promulgated by the Supreme Court of the United States, or

the rules of this court, all bankruptcy proceedings herein shall be governed by the rules of equity practice, in so far as the same may be applicable."

"44.

"JURISDICTION OF REFEREES IN BANKRUPTCY PROCEEDINGS.

"Every referee in bankruptcy shall be and is invested, subject to review by the judge, in every bankruptcy proceeding referred to him as such referee, with jurisdiction to perform each and every part of the duties conferred by the Bankruptcy Act on Courts of bankruptcy, except as otherwise provided by said Act, the General Orders in Bankruptcy, or the rules or orders of the court."

"45.

"REVIEW OF ORDERS OF REFEREES IN BANKRUPTCY PROCEEDINGS.

"1. Every petition to review an order made by a referee in a bankruptcy proceeding shall be filed within twenty days after the making of such order, unless within such period the time shall be extended by the referee."

ADJUDICATION OF BANKRUPTCY—Entered August 24, 1917 by Referee, Lee Brock.

Upon this 24 day of August, A. D. 1917, at 10:00 o'clock in the forenoon, the petition of J. H. Sedberry of the City of Thompson Station, in the County of Williamson and District aforesaid, that he be adjudged a Bankrupt within the true intent and meaning of the Act of Congress, relating to bankruptcy, having been filed with the Referee, together with his schedules and a certificate of the Clerk, that the Judge of said Court is absent

from the District; that this matter has been referred to the Referee in consequence thereof, and said petition having been heard and duly considered, the said J. H. Sedberry is hereby declared and adjudged a Bankrupt accordingly. And it is ordered that the first meeting of creditors be held at the office of the Referee, at 800 Stahlman Building, in the City of Nashville, Tenn., upon the 10th day of September, A. D. 1917, at 10:00 o'clock in the forenoon, at which meeting said Bankrupt is hereby ordered to attend, in compliance with the law.

Lee Brock,
Referee in Bankruptcy.

ORDER OF REFEREE CONFIRMING ELECTION OF TRUSTEE—Entered Sept. 10, 1917.

At Nashville, in said District, on the 10th day of September, 1917, before Lee Brock, Referee in Bankruptcy.

This being the day appointed by the Court for the first meeting of creditors under the said bankruptcy, and of which due notice has been given in the Williamson County News, I, the undersigned Referee of the said Court in Bankruptcy sat at the time and place above mentioned, pursuant to such notice, to take the proof of debts and for the choice of Trustee under the said bankruptcy; and I do hereby certify that the creditors whose claims had been allowed and were present, or duly represented, elected Thos G. Watkins, of Nashville, State of Tennessee, as Trustee of said estate; and that said appointment by the creditors be, and the same is hereby approved.

Upon motion the bond of the Trustee was fixed by the Court at Two Hundred and Fifty ($250.00) and no/100 Dollars, which was executed and approved.

Lee Brock,
Referee in Bankruptcy.

BOND OF TRUSTEE—Filed September 10, 1917.

KNOW ALL MEN BY THESE PRESENTS: That we, Thos. G. Watkins of Nashville, Tennessee, as principal, and Jordan Stokes, Jr., of Nashville, Tenn., and J. R. West, of Nashville, Tenn., as sureties, are held and firmly bound unto the United States of America in the sum of Two Hundred and Fifty and no/100 Dollars, in lawful money of the United States, to be paid to the said United States, for which payment, well and truly to be made, we bind ourselves and our heirs, executors and administrators, jointly and severally, by these presents.

Signed and sealed this 10th day of September, 1917.

The condition of this obligation is such, that, whereas the above named Thos. G. Watkins was, on the 10th day of September, A. D. 1917, appointed Trustee in the case pending in bankruptcy in said court, wherein J. H. Sedberry is the bankrupt, and he, the said Thos. G. Watkins has accepted said trust with all the duties and obligations pertaining thereto:

Now, therefore, if the said Thos. G. Watkins as aforesaid, shall obey such orders as said court may make in relation to said trust, and shall faithfully and truly account for all the moneys, assets, and effects of the estate of said bankrupt which shall come into his hands and possession, and shall in all respects faithfully perform all his official duties as said Trustee, then this obligation to be void; otherwise to remain in full force and virtue.

Thos. G. Watkins,
Jordan Stokes, Jr.,
J. R. West.

Approved:
Lee Brock, Referee.

PETITION OF TRUSTEE TO EMPLOY COUNSEL.

The PETITION of Thos. G. Watkins, Trustee in Bankruptcy of the above named estate, would respectfully show and represent:

That there has been an adjudication in bankruptcy had against J. H. Sedberry, and that your petitioner has been duly elected, appointed, and has qualified as Trustee in Bankruptcy of the above named estate.

Your petitioner would further show and represent to the Court, that there were no assets scheduled in this estate, but that your petitioner has made investigation and caused examinations to be made, from all of which he believes that there is a large amount of assets belonging to this estate which have not been scheduled and turned over to your petitioner.

In making said investigation and examination of the bankrupt and certain members of his family, your petitioner was represented by Mr. Jordan Stokes, Jr., as his attorney, Mr. Stokes having assisting him, Mr. Joseph R. West. That as a result of such investigation and examination of the bankrupt and his family, your petitioner believes that a large sum can be secured for the benefit of the creditors of this estate, but that it will be necessary to employ Counsel, to institute proceedings for the recovery of said property.

Wherefore, your petitioner prays this Honorable Court to authorize, empower and instruct your petitioner, as Trustee in bankruptcy of the above named estate, to enter into a contract of employment with Mr. Jordan Stokes, Jr., as Attorney to represent your petitioner, and to have assisting him, Mr. Joseph R. West, and such other assistants as he may desire, and there being no assets of this estate, and the said Jordan Stokes, Jr., having signified to your petitioner that he is willing to bear the burden of the expenses and represent your petitioner on a contingent basis, your petitioner accordingly asks that the Court authorize and empower him to employ the said Jordan Stokes, Jr., as his Attorney, with the said Joseph R. West to assist the said Jordan Stokes, Jr., and with power in the said Jordan Stokes, Jr., as Attorney for your petitioner, to employ such other assistants as he may deem proper. However, the compensation of all assistants to be deducted from the compensation coming to the said Jordan Stokes, Jr.

Your petitioner prays for such other, further and different relief as he may be entitled to at the hearing, and he will ever pray, etc.

Thomas G. Watkins.

ORDER OF REFEREE ON PETITION TO EMPLOY COUNSEL—Entered Oct. 24, 1917.

This cause came on for hearing before the Honorable Lee Brock, Referee, etc., upon the Petition of Thomas G. Watkins, Trustee in Bankruptcy of the above named estate, for leave to employ Mr. Jordan Stokes, Jr., as his Counsel, and Mr. Joseph R. West assisting Mr. Stokes, with power and authority in the said Jordan Stokes, Jr., to employ such assistants as may be necessary, in his opinion, in representing the said Thos. G. Watkins, as his Attorney, with full power in the said Jordan Stokes, Jr., to institute suit looking to the recovery of assets and property belonging to this estate.

And the said Jordan Stokes, Jr., having stated in open court that he was willing to enter into a contract on a contingent basis, with the Trustee in Bankruptcy, and that he was willing to personally put up all funds necessary to defray the expenses of prosecuting suits for the recovery of property, it is accordingly ordered, adjudged and decreed by the Court, that the prayer of the petitioner, Thos. G. Watkins, Trustee in Bankruptcy, be granted, and that he be authorized and empowered to employ Jordan Stokes, Jr., as his Attorney, with Mr. Jos. R. West assisting Mr. Stokes, and to enter into a contract with the said Jordan Stokes, Jr., as his Attorney to represent him on a contingent basis, with power and authority in the said Jordan Stokes, Jr., to employ such assistants as he may deem advisable, and there being no assets of this estate, the said Jordan Stokes, Jr. to be personally responsible, and to pay all expenses incurred in the prosecution of any suits.

Lee Brock, Referee.

MINUTE ENTRY ON MINUTE BOOK OF REFEREE ON PETITION AND ORDER TO EMPLOY COUNSEL—Entered Oct. 24, 1917.

Trustee's petition to employ Counsel, and Order thereon, Filed Oct. 24, 1917, Minute Book 57, p. 27.

CONTRACT FOR EMPLOYMENT OF ATTORNEY—Dated Oct. 24, 1917.

THIS CONTRACT OR AGREEMENT entered into by and between Thos. G. Watkins, Trustee in Bankruptcy of J. H. Sedberry, Party of the First Part, and Jordan Stokes, Jr., of Nashville, Tennessee, Party of the Second Part, WITNESSETH:

That, WHEREAS, under and by virtue of the authority conferred upon the Party of the First Part by the Bankruptcy Law, and especially, an Order this day made by the Honorable Lee Brock, Referee in Bankruptcy; and,

WHEREAS, the Party of the Second Part has heretofore rendered services to the Party of the First Part and to the estate of J. H. Sedberry, Bankrupt, in the examination of witnesses, investigation of records, and generally, in ascertaining the condition of the bankrupt's property; and,

WHEREAS, the Party of the Second Part is of the opinion that he can recover a substantial amount of property belonging to the estate of J. H. Sedberry, Bankrupt, and the Party of the Second Part having signified that he is willing to accept employment upon a contingent basis, and there being no assets of the estate, that he, in addition, is willing to bear the expenses necessary.

NOW, THEREFORE, the Party of the First Part and the Party of the Second Part have this day agreed as follows:

Contract for Employment of Attorney

The Party of the First Part employs the Party of the Second Part as his Attorney for him and in his name, to institute such suits as may be necessary, and proceed generally to recover any and all property that he may be able to locate, belonging to the estate of J. H. Sedberry, bankrupt, with full power and authority in the Party of the Second Part to employ such attorneys to assist him as in his discretion he may deem advisable. Also, with full power and authority in the Party of the Second Part to receipt for, settle, collect, and adjust any suits or claims that he may prosecute for the collection or recovery of any property belonging to the estate of J. H. Sedberry, Bankrupt.

Any property, funds, or assets that may be recovered or secured for the estate of J. H. Sedberry, bankrupt, shall first be chargeable with the amount that the Party of the Second Part has expended in his necessary expenses in investigating and prosecuting claims and suits, and after such amounts shall have been deducted, in favor of the Party of the Second Part, then, any balance that may remain, shall be divided equally between the Party of the First Part and the Party of the Second Part.

The compensation of the Party of the Second Part shall include all compensation to be paid to him and any attorneys assisting him; and the expenses contemplated by this agreement, to be paid by the Party of the Second Part, are the necessary expenses, such as stenographic charges, court costs, bond, necessary traveling expenses, and such items as are incident thereto.

The Party of Second Part guarantees Party of First Part against any and all damages and expenses growing out of his employment.

IN TESTIMONY WHEREOF, we have hereunto signed our names, this, the 24th day of October, 1917.

Thomas G. Watkins, Trustee,
Party of the First Part.
Jordan Stokes, Jr.,
Party of the Second Part.

ORIGINAL BILL AND EXHIBITS FILED IN THE CHANCERY COURT AT FRANKLIN—Filed June 20, 1918.

To the Honorable Douglas Wilke, Chancellor, Holding the Chancery Court at Franklin, Tennessee.

THE BILL OF COMPLAINT OF THOS. G. WATKINS, TRUSTEE IN BANKRUPTCY OF J. H. SEDBERRY,

—— AGAINST ——

J. H. SEDBERRY, MRS. Z. C. SEDBERRY, INDIVIDUALLY, AND IN HER CHARACTER AS TRUSTEE, RESIDENTS OF WILLIAMSON COUNTY, TENNESSEE; AND W. H. SEDBERRY, J. BERNARD SEDBERRY, FALIEY OVERALL AND KATHERINE SEDBERRY OVERALL, NON-RESIDENTS OF THE STATE OF TENNESSEE; AND THE WILLIAMSON COUNTY BANKING & TRUST COMPANY, A BANKING CORPORATION ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF TENNESSEE, WITH ITS BANKING HOUSE LOCATED AT FRANKLIN, TENNESSEE; AND R. H. KITTRELL, IN HIS CHARACTER AS TRUSTEE, A RESIDENT OF WILLIAMSON COUNTY, TENNESSEE; AND J. F. EGGLESTON, IN HIS CHARACTER AS TRUSTEE, A RESIDENT OF WILLIAMSON COUNTY, TENNESSEE; AND J. C. EGGLESTON, A RESIDENT OF WILLIAMSON COUNTY, TENNESSEE; MARY D. GLASS, AS EXECUTRIX OF THE ESTATE OF W. H. GLASS, DECEASED, A RESIDENT OF WILLIAMSON COUNTY, TENNESSEE.

Complainant would respectfully show to the Court:

That J. H. Sedberry filed his petition in bankruptcy in the United States District Court for the Nashville Division of the Middle District of Tennessee, sitting as a Court of Bankruptcy, on the 24th day of August, 1917, and that such petition so filed, was a voluntary petition in bankruptcy, and that J. H. Sedberry was duly adjudged a bankrupt, within the purview of the Bankruptcy Act, under said petition; and that your complainant, Thos. G. Watkins, was duly elected, appointed, and has qualified as Trustee in Bankruptcy of the said J. H. Sedberry, and that he is duly authorized and empowered to institute this suit.

Complainant would further show to the Court:

That upon assuming the duties of Trustee in bankruptcy of the estate of J. H. Sedberry, he finds, from in-

vestigation, that the schedules in bankruptcy schedule no assets other than articles claimed by the bankrupt, J. H. Sedberry, to be exempt; and that he caused an investigation to be made to ascertain if there were any assets of the said J. H. Sedberry that had not been scheduled; and that he caused the defendant, the said J. H. Sedberry, the bankrupt, and his wife, defendant Z. C. Sedberry, and defendant W. H. Sedberry, son of the said bankrupt, J. H. Sedberry, to be summoned before the Honorable Lee Brock, Referee in Bankruptcy, for examination, touching the property belonging to the bankrupt, J. H. Sedberry, and that as a result of said investigation and examination, your complainant ascertained that there were assets of the said J. H. Sedberry which had not been scheduled in bankruptcy.

Your complainant would further show the Court:

That on the 1st day of January, 1902, defendant J. H. Sedberry, the bankrupt, procured a conveyance to be made by W. J. Zellner and wife to Z. C. Sedberry, Trustee, conveying to the said Z. C. Sedberry, Trustee, the following described real estate, located at or near Thompson Station, Tennessee, such real estate being more particularly described, as follows:

> Lying in the 11th Civil District of Williamson County, Tennessee, beginning on the S. E. corner of Lot No. 1 of the Pointer lands, Mrs. Pointer's N. W. corner and in the center of the Franklin & Spring Hill turnpike; thence with the center of the same, N. 11¼ E. 6 poles N. 39 E. 48 poles, N. 34 E. 59 poles, N. 11 E. 11½ poles, N. 10½ E. 7¼ poles to the S. W. corner of the schoolhouse lot; thence S. 87½ E. 38¼ poles to the S. E. corner of the same; thence N. 10½ E. 12¾ poles to the N. E. corner of the same in the Thompson Sta. and Bethesda road; thence S. 87½ E. 213 poles to J. N. Porter (formerly R. B. Evans N. W. corner); thence with said Porter's W. B., S. ½ W. 190½ to his S. W. corner in L. D. Banks N. B., thence with said Banks north boundary N. 89 W. 205 poles to his N. W. corner; thence N. 88½ W. 130 poles to the beginning, containing 337 acres.

A true copy of the deed conveying said property to Z. C. Sedberry, Trustee, is hereto attached and made a part hereof as Exhibit "A," but the same need not be copied.

Your complainant would further state and charge:

That Mrs. Z. C. Sedberry, either as Trustee or individually, did not pay any part of the purchase price of said farm.

Your complainant would further show the Court:

That the said J. H. Sedberry procured said conveyance to be made to defendant Z. C. Sedberry, his wife, as Trustee, for the purpose of defrauding his existing and subsequent creditors.

Complainant would further show the Court:

That defendant J. H. Sedberry and defendant Mrs. Z. C. Sedberry, have both, under oath, admitted that J. H. Sedberry had absolute charge and control of said property, used it and handled it as his own, said property being a farm; and that the said J. H. Sedberry ran the farm, operated it, collected all sums realized from the operation of said farm, and generally, exercised all rights of ownership over said farm, and did and acted as he pleased with reference to said farm and the income derived from the operation of the same. All of which is admitted under oath by defendants J. H. Sedberry and Z. C. Sedberry.

Complainant would further show the Court:

That defendant Mrs. Z. C. Sedberry has admitted under oath that she had no property or funds of any kind, character or description, at the time she married defendant J. H. Sedberry, nor has she received any funds or property of any kind, character or description, since her marriage to defendant J. H. Sedberry, other than the funds or property which the said J. H. Sedberry may have given to her.

Your complainant would further show the Court:

That both defendant J. H. Sedberry and his wife, Mrs. Z. C. Sedberry, admitted under oath, and complainant charges the facts to be, that the foregoing described property was purchased by an initial or cash payment of $5,000.00, and the balance of the purchase price, namely, 13,000.00, was paid by four notes due in one, two, three and four years. And that the cash payment of $5,000.00 represented moneys which had been borrowed by defendant J. H. Sedberry, from his father, W. G. Sedberry. That all negotiations with reference to the loan of $5,000.00 from W. G. Sedberry, the father of J. H. Sedberry, were negotiated by defendant J. H. Sedberry, and that this payment of $5,000.00 representing the cash payment upon above and foregoing described property, was received by defendant J. H. Sedberry from his father W. G. Sedberry. Defendant J. H. Sedberry and defendant Mrs. Z. C. Sedberry also admitted and stated under oath, that said $5,000.00 was paid back to W. G. Sedberry, the father of J. H. Sedberry, out of the proceeds or income derived from the operation of this farm.

Original Bill and Exhibits Filed in Chancery Court

Complainant would further show the Court:

That all of the property, machinery, stock, tools and other personal property used in the operation and running of this farm, were purchased by defendant J. H. Sedberry, and that the defendant J. H. Sedberry, exercised all rights of ownership over said personal property used in the operation of said farm, and so much so did he exercise such ownership, that he gave mortgages upon said personal property in his own name, without joining defendant, Z. C. Sedberry, in said conveyances. And that defendant Z. C. Sedberry, Trustee, has admitted under oath, that defendant J. H. Sedberry had the right to mortgage any and all of said property, if he saw fit. Said mortgages so executed by the said defendant J. H. Sedberry will be exhibited on or before the hearing of this cause.

Complainant would further show the Court:

That the defendant J. H. Sedberry contracted for, handled, collected, and deposited in bank, all funds received from the operation of said place, and he deposited said funds for the last few years in the defendant Williamson County Banking & Trust Company, at Franklin, Tennessee, to the credit of Mrs. Z. C. Sedberry, Trustee. That the defendant J. H. Sedberry deposited the funds which he received from his interest in his mother's estate, and other funds owned by him and received from other sources to the account of defendant Z. C. Sedberry, Trustee, in the defendant Williamson County Banking & Trust Company. That the purpose of said J. H. Sedberry in depositing said funds to the credit of Z. C. Sedberry, Trustee, was to defraud, delay and hinder his existing and subsequent creditors in the collection of their just debts. That while said funds were deposited by the defendant J. H. Sedberry in the defendant Williamson County Banking & Trust Company to the credit of defendant Z. C. Sedberry, Trustee, nevertheless, practically all the checks upon this account, namely, the account of Z. C. Sedberry, Trustee, in the Williamson County Banking & Trust Company, were signed by defendant J. H. Sedberry. And as further showing the fact that defendant Mrs. Z. C. Sedberry was merely a figure-head, or blind behind which defendant J. H. Sedberry could hide, the checks which Mrs. Z. C. Sedberry signed upon this account, were signed—"J. H. Sedberry, By-Wife." And such checks so drawn by Mrs. Z. C. Sedberry were paid by defendant Williamson County Banking & Trust Company and charged to the account of Z. C. Sedberry, Trustee. Thus showing that defendants J. H. Sedberry, Z. C.

Sedberry, and Williamson County Banking & Trust Company realized and treated said account as the property of J. H. Sedberry.

Defendant Mrs. Z. C. Sedberry has admitted under oath, that the duties, if any there were, upon her as Trustee under said Deed from Zellner and wife, heretofore made Exhibit "A" to this Bill, were not exercised by her, but that all powers and authority that she had, if any, under said Deed, were exercised by defendant J. H. Sedberry; that the defendant J. H. Sedberry had all the power and authority that she, the defendant Z. C. Sedberry, may have had on account of such conveyance. That her duties were simply those of the ordinary wife of a farmer. In other words, she had nothing to do with the operation of the farm, but confined herself solely and alone to her household duties as would any other farmer's wife. And that as to the operation, management and control of said farm, the collection and disbursement of the proceeds, the hiring and discharging of hands, planting of crops, and generally, everything that was done in connection with said farm, was handled by defendant J. H. Sedberry, and by him, as his own. And no separate books were kept, showing any recognition of any trust with regard to said farm, but that the funds of defendant J. H. Sedberry, and the proceeds derived from said place, were co-mingled and were at all times subject to the absolute control and disposition of defendant J. H. Sedberry, as he might see fit. And this condition has obtained from the date said deed was executed and these defendants acquired possession of said farm.

As further evidence of the fraudulent intent and purpose of defendant J. H. Sedberry, we find him, and complainant so charges, operating as Agent, and then, when he feels that the Statute of Limitations has accrued upon certain obligations, or that he can safely come out from under cover of "Agent," we find him, for a short space of time (and this charge is made from the investigation of your complainant, and the admissions of the defendant J. H. Sedberry) operating as J. H. Sedberry, and depositing the proceeds from the farm hereinbefore described, in his own name. And after he had secured funds from various creditors and created obligations, many of which are scheduled in his petition in bankruptcy, we then find this same defendant J. H. Sedberry seeking to get back under cover to avoid the payment of his just obligations and opening up an account with the defendant Williamson County Banking & Trust Company, under the name of Z. C. Sedberry, Trustee; and that the pass book issued to

him at that time by the defendant Williamson County Banking & Trust Company is endorsed on the back—"Williamson County Banking & Trust Company, in account with Mrs. Z. C. Sedberry, Trustee, *subject to check of J. H. Sedberry.*"

Complainant charges that this conduct on the part of defendant J. H. Sedberry, was done solely and alone for the purpose of defrauding the existing and subsequent creditors of defendants J. H. Sedberry, and that the defendant J. H. Sedberry, by having said bank book issued in the manner in which it was, namely, subject to his check, all of which was done, according to the sworn admission of defendant Mrs. Z. C. Sedberry, with her knowledge and consent and approval, did so for the purpose of hindering, delaying, and defrauding his existing and subsequent creditors. All negotiations with reference to the opening of said bank account, as well as all matters connected with the said account after it was opened, were handled by defendant J. H. Sedberry, according to the sworn admission of defendant Mrs. Z. C. Sedberry. And so anxious was the defendant J. H. Sedberry not to lose in any way, his absolute control of all funds and property derived from said farm, that he wouldn't even trust his own wife, defendant Z. C. Sedberry, but had said bank book issued expressly subject to his check, and that as a matter of fact, practically all of said checks drawn on this account were drawn by J. H. Sedberry in his own handwriting, and the name, Z. C. Sedberry, signed thereto by him in his own handwriting. That the few checks that were signed against this account by defendant Z. C. Sedberry, Trustee, were signed, "J. H. Sedberry, By wife."

Complainant would further show the Court:

That from the funds on deposit in the name of Z. C. Sedberry, Trustee, in the Williamson County Banking & Trust Company, defendant J. H. Sedberry paid many of his individual obligations. And particularly does complainant allege and charge the payment of the following personal obligations of J. H. Sedberry out of the funds on deposit to the credit of defendant Mrs. Z. C. Sedberry, Trustee, in defendant Williamson County Banking & Trust Company, which payments are admitted by said J. H. Sedberry. Such payments are as follows:

By check No. 11, dated November 2, 1914, for $1500.00, which check was signed "J. H. Sedberry," and not Z. C. Sedberry, Trustee, and paid out of the funds to the credit of Mrs. Z. C. Sedberry, Trustee, in defendant Williamson County Banking & Trust Company, and which check was

a part payment on a note of J. H. Sedberry given to Caldwell & Smith, or A. S. Caldwell, as part of the amount due under a contract for the purchase of a plantation known as "Australia." That such plantation was contracted to be purchased by J. H. Sedberry in his own name.

Taxes upon the individual property of J. H. Sedberry were paid out of the funds on deposit to the credit of Z. C. Sedberry, Trustee.

We even find that the costs of the present proceedings in bankruptcy of J. H. Sedberry were paid out of the funds on deposit to the credit of Z. C. Sedberry, Trustee.

Complainant would further show the Court:

That there are many other cases in which the personal obligations of J. H. Sedberry were paid out of funds on deposit to the credit of Z. C. Sedberry, Trustee, and that no account was kept of such payments, no charge made against J. H. Sedberry for such payments, and indeed, there was no reason for the keeping any account because all of said property was in fact the property of defendant J. H. Sedberry and was considered and treated and admitted to be, by the sworn admissions of defendant Mrs. Z. C. Sedberry, and was so considered and treated by the Williamson County Banking & Trust Company by its acts in paying the checks drawn, as stated above, out of funds to the credit of the account of Z. C. Sedberry, Trustee.

Complainant would further show the Court:

That with regard to the sale of the personal property located upon said farm, an agreement was entered into between your complainant and defendants J. H. Sedberry and Z. C. Sedberry. A true copy of such agreement is hereto attached and made a part of this Bill as Exhibit "B", but the same need not be copied.

That under the terms of such agreement, defendant J. C. Eggleston was to receive all moneys and notes received from the sale of such personal property, and hold the same, subject to the adjudication of a Court of competent jurisdiction, and he is made a defendant to this suit, solely and alone for the purpose of having an accounting as to these funds and getting an adjudication as to the ownership and a complete discharge to him.

Complainant would further show the Court:

That all the personal property located upon said farm, which was sold under the agreement made Exhibit "B" to this Bill, is the property of J. H. Sedberry; treated by him as his property; recognized by his wife, Mrs. Z. C. Sedberry, as the property of J. H. Sedberry,

under their sworn admission. That defendant J. H. Sedberry mortgaged, if not all, the larger part of said personal property, and that it and the proceeds from the sale thereof rightfully belong to your complainant, as the Trustee in bankruptcy of defendant J. H. Sedberry. All of said personal property was purchased by defendant J. H. Sedberry, and defendant J. H. Sedberry has admitted on oath, that he purchased a threshing machine and equipment in his own name and executed his notes therefor.

Complainant alleges and charges:

That said threshing machine, which is a part of the personal property on said farm and sold in accordance with said agreement made Exhibit "B" hereto, and all other personal property, farm implements, equipment, stock, and generally, any and all property, including household goods, located upon said farm, were the property of defendant J. H. Sedberry and that your complainant is entitled to the same, or the proceeds thereof.

Complainant would further show the Court:

That there are growing crops upon the farm purchased from W. J. Zellner and wife, heretofore set out in this Bill, and that a portion of such crops, defendant Mrs. Z. C. Sedberry, Trustee, in conjunction with defendant W. H. Sedberry, sought to mortgage to defendant Williamson County Banking & Trust Company to secure an alleged indebtedness of $2,000.00.

Complainant is advised and charges:

That all of said growing crop is the property of said J. H. Sedberry; that said mortgage is void and of no force and effect. Said mortgage was executed on September 4th, 1917. A true copy of said mortgage is hereto attached and made a part of this Bill as Exhibit "C," but the same need not be copied.

Complainant further alleges:

That there are other crops located upon said farm which must be harvested and that said crops are the property of defendant J. H. Sedberry.

Complainant is advised, alleges and charges:

That he is entitled to an accounting with defendant Williamson County Banking & Trust Company as to all funds deposited with them to the credit of Z. C. Sedberry, Trustee, which may have been checked out for any purpose subsequent to August 24th, 1917, the date J. H. Sedberry filed his petition in bankruptcy. That defendant Williamson County Banking and Trust Company knew that said account was the property of J. H. Sedberry and not Z. C. Sedberry, Trustee, and that any pay-

ments made by them from said account after August 24th, 1917, was the property or your complainant, and that all of such payments were wrongfully made, and said bank is indebted to your complainant in the amount of such payments.

Your complainant would further charge:

That as of August 25th, 1917, there was standing to the credit of Z. C. Sedberry, Trustee, in said account, the sum of $212.60, and that on September 4th, 1917, this account was further credited with the sum of $1975.00. As to what other credits have been made to this account, and what checks drawn against it, your complainant is not advised, but he is advised and charged that he is entitled to an accounting with defendant Williamson County Banking & Trust Company, and to have judgment against them for any funds that may have been paid out of this account after August 24th, 1917. And your complainant charges that the amount due him from said defendant Williamson County Banking & Trust Company is at least $2,035.00, subject to be increased when an accounting is had between your complainant and the Williamson County Banking & Trust Company.

Your Complainant would further show the Court:

That defendant Williamson County Banking & Trust Company claim to be the owners of an indebtedness owing by J. H. Sedberry and secured by a mortgage or Deed or Trust covering two warehouses owned by J. H. Sedberry located at or near Thompson Station, Tennessee; the amount of said indebtedness is not know to your complainant, but your complainant agreed and consented to a sale of said warehouses, upon and according to agreement, a copy of which is hereto attached and made a part of this Bill as Exhibit "D." That in conformity with said agreement, your complainant is advised that said warehouses were sold and realized the sum of $2,100.00; and your complainant asks an accounting with the defendant Williamson County Banking & Trust Company as to said $2,100.00 realized from the sale of said warehouses.

Your complainant would further show the Court:

That he has not yet received a statement in detail as to the sale of the personal property provided for in the agreement made Exhibit "B" hereto, but that he is entitled to the proceeds of the sale of said personal property.

Your complainant is advised and alleges and charges:

That defendant J. H. Sedberry is the owner of the fee simple title to the farm hereinbefore described and set out in Exhibit "A" to this Bill. That said J. H. Sed-

berry is the absolute owner of all the personal property, and proceeds thereof, located thereon, together with all crops, both harvested and those that are growing upon said farm, and that it is absolutely necessary, for the preservation of said property, that a Receiver is appointed to take charge of said farm and crops thereon; market the crops thereon and harvest those that have not been harvested; to rent said farm out; and generally, to look after and attend to the same. That unless a Receiver is appointed, the defendants will dispose of the growing crops and the crops that have been gathered; that they are now seeking to dispose of said crops, and that as evidence of this, the defendant Mrs. Z. C. Sedberry executed the mortgage made Exhibit "C" to this Bill, seeking to dispose of a portion o fthe growing crop. And complainant is advised and charges that defendant J. H. Sedberry is now acting under the guise and cloak of defendant Z. C. Sedberry, Trustee, gathering in said crops, and making all efforts in his power to dispose of the same, and that unless restrained by this honorable Court, and a Receiver appointed to take charge of said property, all of said property will be dissipated and the proceeds lost to your complainant, who is rightfully entitled to the same.

Complainant would further state and show:

That the defendants W. H. Sedberry, J. B. Sedberry and Katherine Sedberry Overall are the only children of defendants J. H. Sedberry and his wife, Mrs. Z. C. Sedberry, and they are made defendants to this suit on account of the fraudulent manner the deed to said farm was made. And they are made such defendants to represent themselves and all other children that may be born to said J. H. and Mrs. Z. C. Sedberry, and in order that all clouds may be removed from the title to said farm. But complainant charges that Mrs. Z. C. Sedberry is now past fifty years of age, and therefore, cannot and will not bear other children.

Your complainant alleges and charges:

That Mrs. Z. C. Sedberry, Trustee, and individually, and none of said children have any interest in said property, but that said deed from W. J. Zellner and wife was so written and taken by direction and procurement of J. H. Sedberry for the purpose of hindering, delaying and defrauding the existing and subsequent creditors of defendant J. H. Sedberry, and that the purposes that caused defendant J. H. Sedberry to have said deed drawn in the manner and form that it was, are shown to have been fraudulent and for the purposes of hindering, delaying and defrauding his existing and subsequent creditors.

Complainant is advised that he is entitled to and injunction, enjoining and restraining defendant J. H. Sedberry and wife, Mrs. Z. C. Sedberry, from disposing of any of the personal property located upon said farm; also, the growing crops and crops that have been gathered; and any and all property located or used in connection with said farm. That he is entitled to an injunction enjoining and restraining defendants J. H. Sedberry, Z. C. Sedberry, W. H. Sedberry, J. Bernard Sedberry, Katherine Sedberry Overall, and husband, Falley Overall, from transferring, conveying, or in any wise encumbering in any way, the farm hereinbefore described.

Complainant is also advised that he is entitled to have a Receiver appointed by this Honorable Court to take charge of said farm, personal property, or proceeds thereof, and crops, both gathered and growing, and to dispose of the same, collect the proceeds and hold the same, subject to the further orders of this Court; to rent said farm, and generally, hold and handle said property, subject to the further orders of this Court; and also, to receive the funds and securities deposited with the defendant J. C. Eggleston, subject to the further orders of this Court. And that he is entitled to an injunction enjoining and restraining defendant J. F. Eggleston, in his character as Trustee, and the defendant Williamson County Banking & Trust Company, as the owners and holders of the alleged indebtedness of $2,000.00 set forth and described in the chattel mortgage upon the growing crop, a copy of which has been made Exhibit "C" to this Bill, from disposing of said crops, or in any wise interfering with the same.

Complainant would further show the Court:

That defendant R. H. Kittrell is Trustee under a Deed of Trust executed by defendant's J. H. Sedberry, Z. C. Sedberry, Trustee, J. B. Sedberry and W. H. Sedberry, which Deed of Trust purports to secure two notes of $2,500.00 each, and that all of said indebtedness has been paid, with the exception of $2,500.00, according to the Answer filed by Mrs. Mary D. Glass, Executrix of W. H. Glass, deceased, in the case of T. J. Timmons v. J. H. Sedberry, et al, pending in the Chancery Court at Franklin, Williamson County, Tennessee. And the said R. H. Kittrell as Trustee, and Mary D. Glass, Executrix of W. H. Glass, deceased, are made parties defendant to this Bill, solely and alone on account of said indebtedness secured by said Deed of Trust. And complainant is advised that he is entitled to have the said R. H. Kittrell and Mary D. Glass, Executrix of W. H. Glass, deceased,

disclose in their Answer, the amount of indebtedness they hold as against the farm hereinbefore described, secured by the Deed of Trust hereinbefore referred to, a copy of which Deed of Trust is hereto attached and made a part of this Bill as Exhibit "E."

Complainant would further show the Court:

That while the Deed from W. J. Zellner and wife to Z. C. Sedberry, Trustee, a true copy of which has heretofore been made a part of this Bill as Exhibit "A," contains the following clause:

> "Said Z. C. Sedberry, Trustee, will hold said tract of land for the use and benefit of herself and husband, J. H. Sedberry, and the children of said Z. C. Sedberry, by her present husband, J. H. Sedberry, such as may hereafter be born to said couple, as well as those now living."

Although there is the foregoing recitation in the Deed, there has in fact been no accounting, no distribution made whatsoever (nor was there ever any such intention), of the income derived from said farm, by Z. C. Sedberry, Trustee, to any one of said children, but all of the income derived from said farm has been held, used, and controlled absolutely by defendant J. H. Sedberry, as his own. And defendant W. H. Sedberry, who is now twenty-five years of age, has stated under oath, that he had no interest whatsoever in said farm, growing crops, or any property located on said farm.

Complainant would further show the Court:

That J. Bernard Sedberry, whose initials are J. B. Sedberry, is the same person described and designated in the deed to the farm, made an Exhibit to this bill, and is over twenty-five years of age; W. H. Sedberry is twenty-five years of age; and that defendant Katherine Sedberry Overall is a minor, nineteen years of age.

PREMISES CONSIDERED, COMPLAINANT PRAYS:

1st: That proper process issue as to the resident defendants; that publication be made for the non-resident defendants, and that Guardian ad Litem be appointed for the minor, defendant, Katherine Sedberry Overall; that all of said defendants be required to answer said Bill, but their oaths to their answers are expressly waived.

2nd: That an injunction issue enjoining and restraining defendants J. H. Sedberry, Z. C. Sedberry, W. H. Sedberry and J. Bernard Sedberry, Katherine Sedberry

Overall, and husband, Falley Overall, from transferring, conveying, or in any wise encumbering in any way, the farm set out and described in this Bill. And also, enjoining and restraining them and each of them from disposing of any of the personal property and crops, both harvested and growing, upon said farm.

3rd: That a Receiver be appointed to take charge of said farm, growing crops, personal property, and the proceeds of the sale of the personal property, now in the hands of defendant J. C. Eggleston, with power and authority in such Receiver to harvest and market and sell said growing crops, dispose of such personal property as is undisposed of; rent out said farm, or operate the same, as in his discretion may seem best; and to collect any and all amounts owing or to become due from the sale of any and all of the property set out in the foregoing Bill.

4th: That the defendant Williamson County Banking & Trust Company be required to make an accounting with your complainant, and that your complainant be given judgment against defendant Williamson County Banking & Trust Company for all funds deposited in said bank and checked out after August 24th, 1917.

5th: That the chattel mortgage executed by Z. C. Sedberry, Trustee, and W. H. Sedberry, to defendant J. F. Eggleston, Trustee, to secure an indebtedness of Two Thousand Dollars to the Williamson County Banking & Trust Company, be declared void, and that if any of said indebtedness secured by said Deed of Trust has been collected by defendant Williamson County Banking & Trust Company, that your complainant be given judgment against defendant Williamson County Banking & Trust Company for such amounts as have been paid upon said indebtedness.

6th: That all proper decrees and references be had to ascertain the amounts owing to the Williamson County Banking & Trust Company secured by Deeds of Trust on the warehouses at or near Thompson Station, and amounts realized from the sale thereof; and the amounts owing to Mary D. Glass, Executrix, secured by Deed of Trust on said farm.

7th: That your complainant be declared to be the owner of the farm set out and described in the foregoing Bill, and that said farm be sold on a credit of six, twelve, and eighteen months, free from the equity of redemption, and the proceeds be applied in paying costs and expenses of this proceedings; the amount due Mary D. Glass, Executrix, and the balance be paid to your complainant.

8th: That complainant be decreed to be the owner

of all said personal property and growing and harvested crops on said farm, and the same or the proceeds thereof, paid or delivered to him.

9th: Complainant prays for general relief.

This is the first application for injunction and Receiver in this cause.

Jos. R. West,
Jordan Stokes, Jr.,
Solicitors for Complainant.

State of Tennessee, }
County of Davidson. }

Thomas G. Watkins makes oath that he is Trustee in Bankruptcy of J. H. Sedberry, is complainant in the foregoing Bill, and that the charges and allegations therein made as of his own knowledge are true, and those made on information and belief, he believes to be true; and that the statements and charges in said Bill, as a whole, are true to the best of his knowledge, information and belief.

Thomas G. Watkins.

Subscribed and sworn to before me this, the 24th day of October, 1917.

(SEAL)

Aline J. Swain,
Notary Public.

ORDER APPOINTING RECEIVERS CHANCERY COURT CASE AT FRANKLIN—Entered October 24, 1917.

To the Clerk and Master at Franklin, Tennessee:

Upon complainant entering into bond in the sum of Five Hundred Dollars, conditioned as required by law, issue the writs of injunction as prayed for in the foregoing Bill.

The application in this cause for the appointment of Receiver coming on this day to be heard before me, at Chambers, on consideration thereof, it is allowed, and L. W. Buford, Clerk and Master of the Chancery Court at Franklin, Tennessee, and Newt. Cannon, Jr., are hereby appointed Receivers of the property described in the Bill as prayed for, and on their giving a Receiver's Bond, with two sufficient sureties, in the penalty of Twenty-five Hundred Dollars, they will enter upon the discharge of their duties as such Receivers, and will at once proceed at public or private sale as they may deem best, to convert into money, all of the personal property, growing crops, and choses in action, mentioned in the Bill. And the real estate, they will rent out for the term of one year. The rents, if any there be at the present time, they will collect and account for. The Clerk and Master will give a copy of this Order as his evidence of authority, and if possession of any of said personal property is refused him, or if the tenants or parties in possession of said real estate refuse to attorn to him, the Master will issue a writ of possession to the Sheriff to put the Receivers into the full and peaceable possession of all of the property so withheld. The Receivers will report their action in the premises, to the next term of the Chancery Court at Franklin, Tennessee. The Clerk and Master will file this Order in the cause, and note it on his rule docket.

This October 24th, 1917.

A. G. Rutherford,
Judge of the Third Circuit Court of
Davidson County, Tenn.

EXHIBIT "A" TO ORIGINAL BILL.

W. J. Zellner and Wife,
to
Mrs. Z. C. Sedberry, Trustee. } DEED

For the consideration of Eighteen Thousand ($18,000.00) Dollars, $5,000.00 of which is paid in cash, the receipt whereof is hereby acknowledged, and four promissory notes, all bearing even date herewith, the first given for $3500.00, due twelve months after date with interest from date. The second for $3500.00 due twenty-four months after date, with interest from date, payable annually, the third for $3500.00 due thirty-six months after date with interest from date, and the fourth for $3000.00 due forty-eight months after date with interest from date. (We W. J. Zellner and wife, S. R. Zellner, have bargained and sold and do hereby transfer and convey to Mrs. Z. C. Sedberry, Trustee), the following described tract of land lying in the 11th Civil district of Williamson County, Tennessee; Beginning on the S. E. Corner of lot No. 1 of the Pointer lands, Mrs. Pointers N. W. corner and in the center of the Franklin and Spring Hill turnpike; thence with the center of the same, N. 11¼ E. 6 poles, N. 39 E. 48 poles, N. 34 E. 59 poles, N. 11 E. 11½ poles, N. 10½ E. 71¼ poles to the S. W. corner of the schoolhouse lot; thence S. 87½ E. 38¼ poles to the S. E. corner of the same; thence N. 10½ E. 12¾ poles to the N. E. corner of the same in the Thompson Sta. and Bethesda road; thence S. 87½ E. 213 poles to J. H. Porter (formerly R. B. Evans N. W. corner); thence with said Porters W. B. S. ½ W. 190½ to his S. W. corner in L. D. Banks N. B.; thence with said Banks north boundary, N. 39 W. 205 poles to his N. W. corner; thence N. 88½ W. 130 poles to the beginning, containing 337 acres.

To have and to hold said above described tract of land to the said Mrs. Z. C. Sedberry, Trustee, upon the uses, trust and conditions hereinafter set out.

We covenant with said C. Z. Sedberry that we are lawfully seized of said land, have a perfect right to convey same, and that it is unencumbered in any way whatsoever.

We further covenant and bind ourselves, our heirs and assigns, to warrant and defend the title to said land to the said Z C. Sedberry, Trustee, against the lawful claims of all persons whomsoever. Said conveyance is made for the consideration above set out, and upon the following conditions:

Exhibit "A" to Original Bill

It is hereby agreed that an express and specific lien is retained on the above described tract of land to secure the payment of the four above mentioned notes given for the deferred payments of the purchase price of said tract of land, together with the interest on same. It is however further agreed that in case the purchaser hereof should so desire after the payment of anyone or more of said notes, said vendor's lien will be released from that proportionate part of said land which the payment of said note represents.

Said Z. C. Sedberry, Trustee will hold said tract of land for the use and benefit of herself and husband J. H. Sedberry and the children of said Z. C. Sedberry by her present husband, J. H. Sedberry, such as may hereafter be born to said couple as well as those now living. Said Z. C. Sedberry, Trustee is further authorized and empowered to sell and convey said land or any part of the same for the purpose of reinvestment, but in the case of such sale, the proceeds shall be reinvested in other lands to be held subject to the same conditions and limitations herein set out, except such of said proceeds as may be applied to the payment of the purchase money for the tract of land herein conveyed.

It is further provided in order to perfect any sale of said land or any portion of same by the said trustee, it shall be necessary for her husband J. H. Sedberry to join her in the execution of the deed conveying said tract of land or any part of same, sold under the provisions of this deed and for the considerations herein above set out we transfer and convey to Mrs. Z. C. Sedberry, Trustee, our reversionary interest in and to what is known as the "Schoolhouse lot" of about three acres which formerly belonged to the tract of land herein above conveyed and is located immediately in the corner formed by the junction of the Bethesda road and Franklin & Spring Hill pike, said lot fronting the said road and pike.

In witness whereof, we have hereunto set our hands, this the 1st day of January, 1902.

W. J. Zellner,
S. R. Zellner.

I. R. S. T.

State of Tennessee, }
Williamson County. }

Personally appeared before me, M. H. McIntosh, a Notary Public in and for said county and state, regularly appointed, commissioned and qualified, the within named

Exhibit "A" to Original Bill

bargainors, W. J. Zellner and S. R. Zellner, with whom I am personally acquainted and who acknowledged that they executed the within and attached instrument for the purposes therein contained, and Mrs. S. R. Zellner, wife of said W. J. Zellner, having appeared before me, privately and apart from her husband, the said Mrs. S. R. Zellner acknowledged the execution of said deed to have been done by her freely, voluntarily and understandingly and without compulsion or constraint from her said husband and for the purposes therein expressed.

Witness my hand and official seal at Thompson Station, Tenn., this 4th day of January, 1902.

(SEAL) M. H. McIntosh, Notary Public.

Filed April 9, 1904, at 10:25.

O. B. Paschall, Register.

State of Tennessee. }
Williamson County. }

I, C. G. Lavender, Register in and for Williamson County, hereby certify that the within and foregoing is a true and perfect copy of a deed executed by W. J. and S. R. Zellner to Mrs. Z. C. Sedberry, Trustee, and the releases thereon as the same appears of record in my office.

This March 11, 1915.

C. G. Lavender, Register.

I declare that I am the true and lawful holder of the first two notes of $3500.00 each, herein secured, and I hereby acknowledge satisfaction thereof and discharge of lien to secure same in full. This April 5th, 1904.

One note was paid April 5th, 1903.

Wit: W. G. Glass.

O. B. Paschall, Register.

We declare that we are the true and lawful holders of the $3000.00 note herein secured and we hereby acknowledge satisfaction thereof and discharge of lien to secure same in full. This Aug. 17, 1904.

J. A. & B. F. Short, By J. E. Short.

Witness:

O. B. Paschall, Register.

I declare that I am the true and lawful holder of the $3000 note due forty-eight months after date and being last note or deferred payment secured by this instrument and I hereby acknowledge satisfaction thereof and discharge of lien to secure same in full. This January 20, 1905.

Wit: J. W. Harrison.

O. B. Paschall, Register.

EXHIBIT "B" TO ORIGINAL BILL.

AGREEMENT FOR SALE OF PERSONAL PROPERTY.

Whereas, Z. C. Sedberry, as Trustee, claims to be the owner of certain personal property, located upon the farm purchased by W. J. Zellner and wife, upon which J. H. Sedberry and Z. C. Sedberry, Trustee, reside, which said personal property is also claimed by T. G. Watkins, Trustee in bankruptcy of J. H. Sedberry, and which said personal property has been advertised for sale by Z. C. Sedberry, Trustee; the sale commencing on Thursday, September 20th, 1917, at 10 o'clock A. M., on the premises; and,

Whereas, the Williamson County Banking & Trust Company, also claims an interest in said property, on account of certain mortgages; and,

Whereas, as it is to the interest of all parties that said sale of said personal property be proceeded with, and the funds and securities received from said sale be turned over to, and held by some party pending an adjudication as to the title and right to the proceeds of said sale.

Now, therefore, we have entered into the following agreement;

1st: We do hereby constitute and appoint J. C. Eggleston to receive all funds, notes and securities received from the sale of any and all of the personal property located upon the farm purchased from W. J. Zellner and wife, and said J. C. Eggleston will deposit said funds in bank and hold and collect the notes and securities until the title thereto shall have been determined by some Court of competent jurisdiction, and upon the title and rights to said funds, notes and securities having been determined by a Court of competent jurisdiction, then the said J. C. Eggleston will pay over to the party adjudged to be entitled to the same, all funds he may receive and collect, together with any and all notes and securities received by him from the sale of said personal property.

This agreement executed in duplicate.

In witness whereof, we have hereunto set our hands at Franklin, Tennessee, on this the 19th day of September, 1917.

Thos. G. Watkins, Trustee,
Z. C. Sedberry, "
Williamson County Bkg. & Tr. Co.,
By J. F. Eggleston, Pt.
Approved—Lee Brock, Referee.
O. K.—J. C. E.

EXHIBIT "C" TO ORIGINAL BILL

Z. C. Sedberry, Tr.
To
J. F. Eggleston, Tr.

MORTGAGE.

To secure the payment of two notes of even date herewith executed by the undersigned Mrs. Z. C. Sedberry trustee and W. H. Sedberry to Williamson County Banking & Trust Company for the sum of One Thousand Dollars, each due respectively thirty and ninety days after date, I, the undersigned Mrs. Z. C. Sedberry, trustee, have bargained, sold and do hereby convey and mortgage to J. F. Eggleston, trustee, the following described personal property, to-wit:

All growing crops now on my farm in the 11th District of Williamson County, Tennessee, on Franklin & Columbia turnpike near the village of Thompson Station, Tenn., on which I now reside and said crops consisting principally of millet and corn, there being 25 acres more or less of millett and 75 acres, more or less of corn now growing on said farm.

I covenant with said trustee that I am lawfully seized and possessed of said crops and have a good and perfect right to convey the same and that they are unencumbered in any way whatever.

But this conveyance is made to secure the payment of said two above described and if I pay same at maturity then this conveyance to be null and void. Should I fail to pay either of said notes when due, then or at any time thereafter the said trustee is authorized to take possession of said crops and market same for best cash price obtainable without advertisement and with proceeds of sale pay all costs, fees and expenses incident or necessary to such sale and then said two notes in full, and any balance to be paid to me or my order.

Witness my hand this the 1st day of September 1917.

Z. C. Sedberry, Trustee,
W. H. Sedberry.

State of Tennessee,
County of Williamson.

Personally appeared before me, C. B. Alexander, a Notary Public in and for said County and State, the within named Z. C. Sedberry, Trustee, & W. H. Sedberry, the bargainors, with whom I am personally acquainted, and acknowledged that they executed the annexed instrument for the purposes therein contained.

Exhibit "D" to Original Bill

Witness my hand and official seal, at office, this the 4th day of Sept., 1917.

C. B. Alexander,
(SEAL) Notary Public.
Com. expires Jan. 10, 1918.

Filed for record the 4th day of Sept., 1917, at 4:05 o'clock P. M. Reg. in Tr. D. B. 31—page 449.

C. G. Lavender, Register.

EXHIBIT "D" TO ORIGINAL BILL.

AGREEMENT WITH REGARD TO SALE OF WAREHOUSES.

Whereas, J. F. Eggleston, acting as trustee under and by virtue of a deed of trust executed by J. H. Sedberry, has proceeded to advertise for sale two pieces or parcels of real estate located in Williamson County, Tennessee, known as the Stovall warehouse and the Sedberry warehouse, which property is located at, or near Thompson Station, Tennessee, and,

Whereas, said property is claimed by T. G. Watkins, Trustee in Bankruptcy of J. H. Sedberry, subject to all valid encumbrances, and the right of said J. F. Eggleston, as Trustee, to sell said property without the consent of T. G. Watkins, Trustee, is questioned and,

Whereas, all other parties are desirous that said property be sold in acordance with the advertisement as made by J. F. Eggleston, Trustee, provided the funds realized from the sale of said property shall be held intact, subject to an adjudication as to their ownership by a Court of competent jurisdiction.

Now, therefore, we, J. F. Eggleston, Trustee, the Williamson County Banking & Trust Company, T. G. Watkins, Trustee in bankruptcy of J. H. Sedberry, do hereby nominate, constitute and appoint J. C. Eggleston,

Exhibit "D" to Original Bill

with full power and authority in him, to accept and receive the consideration that may be bid for said property at the sale to be held on September 20th, 1917, and to receive ⅓ of said consideration in cash, and the balance in one and two years, the balance to be evidenced by notes with approved security and the said J. C. Eggleston shall deposit the cash in bank, and receive and hold and collect the notes for the deferred payments, and shall turn over such cash and notes to the parties that may be adjudicated to be the owner of same by a Court of competent jurisdiction.

The said T. G. Watkins, Trustee, shall have thirty days from this date in which to investigate the trust deed or mortgage claimed by the Williamson County Banking & Trust Company and in case the said T. G. Watkins, Trustee, does not investigate and institute proceedings within thirty days from this date, questioning the validity of the trust deed or mortgage held by the Williamson County Banking & Trust Company, then J. C. Eggleston shall, at the expiration of thirty days from this date, pay the indebtedness owing to the Williamson County Banking & Trust Company, as evidenced by said Trust Deed or Mortgage under which the said J. F. Eggleston, is proceeding with the sale of said warehouses.

It is further agreed and understood, that said J. F. Eggleston, shall make deed, as trustee, to the purchaser of said property, and we do hereby ratify and confirm his action in making deed to such purchaser, and we do further authorize and empower said J. F. Eggleston, Trustee, to pay the taxes on said property, if there be any upon said property, and all expenses of making the sale under said trust deed or mortgage.

This agreement executed in duplicate.

In witness whereof, we have hereunto signed our names at Franklin, Tennessee, on this the 19th day of September, 1917.

Thomas G. Watkins, Trustee.
Williamson Co. Bkg. & Trust Co.,
By J. F. Eggleston, Pt.
J. F. Eggleston, Trustee,
Approved, Lee Brock, Referee.

EXHIBIT "E" TO ORIGINAL BILL.

DEED OF TRUST ON LAND.

For and in consideration of One Dollar to us in hand paid by R. H. Kittrell, Trustee, and other considerations hereinafter mentioned, we, Mrs. Z. C. Sedberry, Trustee, J. H. Sedberry and J. B. Sedberry and W. H. Sedberry, children of J. H. Sedberry and Z. C. Sedberry, of 11th Civil District in the County of Williamson and State of Tennessee, have bargained and sold, and do hereby transfer and convey unto the said R. H. Kittrell, Trustee, his successors and assigns, the following real estate and personal property situated in the county of Williamson and State of Tennessee, to-wit:

A tract of land situated in the 11th Civil District of said County and State, bounded on the North by Public road; and the East by lands of Porter; on the South by lands of Banks and Mefford, and on the West by the Spring Hill turnpike, containing 337 acres, more or less, and being the same property conveyed to Mrs. Z. C. Sedberry, Trustee, by Deed W. H. Zellner, of record in R. O. W. C.

To Have and To Hold the said tract or parcel of land, with the appurtenances, estate, title and interest thereto belonging, to the said R. H. Kittrell, Trustee, his successors or assigns forever. And we, said Mrs. Z. C. Sedberry, Trustee, et al, do covenant with the said R. H. Kittrell, Trustee, that we are lawfully seized and possessed of said real estate, have a good right to convey it, and that the same is unencumbered.

And we, the said Mrs. Z. C. Sedberry, Trustee, et al, do further bind ourselves, our heirs and legal representatives, to warrant and forever defend the title to the above described property to the said R. H. Kittrell, Trustee, his successors and assigns, against the lawful claims of all persons whomsoever. But this conveyance is made in trust, for the following uses and purposes, and none other, to-wit:

The said Mrs. Z. C. Sedberry, Trustee, J. H., J. B. and W. H. Sedberry, justly indebted to R. H. Kittrell in the manner and amount following, to-wit:

By two notes of even date herewith, for the sum of Twenty-five Hundred Dollars ($2500.00) each, due twelve months after date with interest from date, payable annually. This conveyance to secure the payment of said indebtedness.

And we, the said Mrs. Z. C. Sedberry, Trustee, et al, do agree to keep the taxes on said property promptly paid

as the same may become due; and we further agree to keep the improvements on said property insured against damage or loss by fire, in some solvent fire Insurance Company, the amount of such insurance to be not less than Twenty-five Hundred Dollars ($2500) and to have the same properly transferred for the benefit of said R. H. Kittrell.

Now, therefore, should we, the said Mrs. Z. C. Sedberry, Trustee, et al, promptly pay the above mentioned notes at maturity, and comply with the above stipulations, then, the legal title to property herein conveyed to said Trustee, shall immediately revert to and be vested in said conveyor.

Should we, the said Mrs. Z. C. Sedberry, Trustee, fail to keep said improvements insured and taxes paid, as above specified, the said R. H. Kittrell, or the said R. H. Kittrell, Trustee, or his successors in trust, is hereby authorized to procure said insurance and pay said taxes, and charge the same to us, and the amount so paid, shall be treated as a credit on the principal debt herein, and the same, together with 6% interest per annum, collected with said principal indebtedness; and in the event of our failure to pay said note for a period of ten days after maturity, or said taxes, or insurance, for ten days after the same may have been paid for us, under the above stipulations, then, or any time thereafter, the same remaining unpaid, the said R. H. Kittrell is authorized to declare the whole of the debt herein secured, due and payable; in which event, the said R. H. Kittrell Trustee, or his successor in trust, is authorized, after having given notice of the time, terms and place of sale, by three weekly publications in some newspaper published in Williamson County, Tennessee, to sell said above described property at public auction, to the highest bidder for cash, free from the equity of redemption, homestead, and dower, which we, Mrs. Z. C. Sedberry, Trustee, hereby expressly waive, and execute a deed to the purchaser, whom ——————will put in possession of said premises.

The said R. H. Kittrell, or the holder of said debt, or any part thereof, may bid and become purchaser at said sale.

In the event of such sale, the proceeds shall be applied as follows:

1st: To the costs and expenses of executing this trust, including a reasonable commission to the said Trustee, or his successor, making the sale; also, a reasonable Attorney's fee for his services in the premises, and the fee of an auctioneer; and also, to all costs and Attorney's

Exhibit "E" to Original Bill

fees necessary in obtaining possession of said premises.

2nd: To the payment of said indebtedness, or any balance thereof.

3rd: The balance, if any there be, shall be paid to us, or our order.

The necessity of said Trustee, or any successor, taking oath or giving bond hereunder, is expressly waived.

In the event the Trustee herein named should decline or refuse, or for any reason be unable to execute this trust when by the terms required to do so, then the said R. H. Kittrell, or the holder of the debt herein secured, or any part thereof, may nominate a successor, clothed with all the rights and powers herein granted to the said R. H. Kittrell, such nomination to be in writing, probated as the laws of this State require, in the execution of Deeds, and the registration of said nomination in the office of the Register of Deeds for the County in which said property is situated, shall be conclusive evidence of the authority of such succeeding Trustee to act in the premises.

This 2nd day of March, 1914.

Mrs. Z. C. Sedberry, Trustee,
J. H. Sedberry,
J. B. Sedberry, D. D. S.
W. H. Sedberry.

State of Tennessee.)
Williamson County.)

Personally appeared before me, C. B. Alexander, a Notary Public in and for said County and State, the within named Mrs. Z. C. Sedberry, Trustee, J. H. Sedberry, and W. H. Sedberry, the Bargainors with whom I am personally acquainted, and who acknowledged that they executed the within instrument, for the purposes therein contained.

And Z. C. Sedberry, Trustee, wife of the said J. H. Sedberry, having personally appeared before me, privately and apart from her husband, the said J. H. Sedberry, acknowledged the execution of said instrument to have been done by her freely, voluntarily and understandingly, and without compulsion or constraint from her husband, and for the purposes therein expressed.

Witness my hand and official seal at Franklin, Tennessee, this 3rd day of March, 1914.

C. B. Alexander, Notary Public.

(SEAL)

Answer of All Defendants in Chancery Court

State of Tennessee. }
Williamson County. }

Filed for record, this 6th day of March, 1914, at 10 o'clock, 5 minutes, A. M.

Lee S. McEwen, Register.

State of Wisconsin, }
Grenada County. }

Personally appeared before me, John P. Jones, A Notary Public in and for said county and state, the within named J. B. Sedberry, the bargainor with whom I am personally acquainted, and who acknowledged that he executed the foregoing instrument, for the purposes therein contained.

Witness my hand and official seal, Grenada, Miss., this 2nd day of March, 1914.

John P. Jones, Notary Public.

(SEAL)

ANSWER OF ALL THE DEFENDANTS IN THE CHANCERY COURT CASE AT FRANKLIN, TENNESSEE—Filed Nov. 19, 1917.

The Separate Answer of J. H. Sedberry to the Bill of Complaint filed in this case, against him and others, by Thos. G. Watkins, Trustee in Bankruptcy of J. H. Sedberry.

Respondent reserving all proper exceptions to the many insufficiencies and inaccuracies in said bill contained, for answer thereto says:

That he admits that he was adjudged a voluntary bankrupt, as alleged, and that complainant Thos. G. Watkins, is the duly qualified and acting Trustee in Bankruptcy of said estate.

Answer of All Defendants in Chancery Court

That respondent at the time he filed his petition in bankruptcy was of opinion he owned no property except certain exemptions as scheduled, and now avers that he owns no property to which said complainant as Trustee in Bankruptcy is entitled, other than as set out in said schedule.

II

That it is true, that Respondent did in 1902, arrange to buy real estate as described in complainant's bill, the title to which was taken by Mrs. Z. C. Sedberry, Trustee, who has since held, and still holds, said real estate in her own name as Trustee, as shown by the deed of conveyance creating such estate, which is the deed of W. J. Zellner and wife to Mrs. Z. C. Sedberry, Trustee, and the same was then duly recorded in the Register's Office of Williamson County, Tennessee, and ever since that time title has been held by the said Z. C. Sedberry, Trustee, as in said deed conveyed.

At the time of the creation of said trust by said deed respondent, J. H. Sedberry, had no creditors, and respondent denies, that he had any other interest in said land, except as set out in said deed,—a contingent remainder interest to a part thereof, as shown by said deed; and further avers, that said conveyance was not made for the purpose of defrauding any of his creditors; and as a matter of fact, he had no creditors. In fact, he was amply solvent and doing a flourishing business for himself at the time this conveyance was made, and there existed no creditors whose debts were created prior to 1912, as respondent now recalls,—more than ten years after the creation of this trust estate, as aforesaid, and long after the entire purchase price of said farm described in complainant's bill had been fully paid by Mrs. Z. C. Sedberry, Trustee.

Respondent denies the allegation, that Mrs. Z. C. Sedberry, Trustee, ever as Trustee, or individually, did not pay any part of the purchase price of said farm." The fact being, that she borrowed the cash payment of $5,000.00 from W. G. Sedberry, and afterwards paid same by a sale of property which she owned individually, and the balance of the purchase price was paid from the proceeds of the farm.

Respondent, however, avers, that had he, himself, paid for the farm with his own means, at that time, having no creditors, and being amply solvent, and particularly, since none of the creditors in the bankruptcy proceeding, for whom the complainant, as trustee, is now

seeking a recovery,—the creation by him of such trust estate would be within its legal rights, and his present creditors, nor the trustee representing them, would have no legal right to question the bona fides of the creation of this trust.

Respondent admits, that his wife, Mrs. Z. C. Sedberry, Trustee, permitted him to manage and control said farm as her agent, and that she ratified and approved his acts therein, and Respondent insists that he has never managed or controlled said farm except as the agent and representative of Mrs. Z. C. Sedberry, Trustee.

Respondent would state, that he does not recall all of the questions and answers that were put to him in his examination in said bankruptcy proceedings, but he denies that the initial payment for this farm of $5,000.00 was money that he individually borrowed from his father, W. G. Sedberry, but on the other hand, avers, that this was borrowed by Z. C. Sedberry, Trustee, and that this loan was thereafter—in about three years—paid back to the said W. G. Sedberry by Mrs. Z. C. Sedberry, individually, by the means of selling certain real estate that she owned in her own name, in the 11th civil district of Williamson County (the deed to which was properly of record in the R. O. W. C. T.) to the said W. G. Sedberry for the sum of $10,000.00 or thereabout, the exact amount to be shown on the hearing, and this $5,000.00 loan was credited by the said W. G. Sedberry in said sale of said real estate. This property owned by Mrs. Z. C. Sedberry individually, was what is known as a part of the Wade place. The full facts as to this transaction and respondent's property rights will be shown on the hearing.

III

Respondent denies, that any of the personal property used in connection with said farm, owned by Z. C. Sedberry, Trustee, was his own personal property, it is true that he had charge of same in the representative capacity as agent as aforesaid in the operation of the farm.

Respondent admits that he did sell the produce of the farm and collected the moneys for same, but he avers that, this was done in his representative capacity as agent of Mrs. Z. C. Sedberry, Trustee, in the management of said farm; and that such money, or the proceeds of the sale of the produce of said farm were the property of said Z. C. Sedberry, Trustee, and not the property of this respondent.

Answer of All Defendants in Chancery Court

Respondent denies, that he had, or has, any interest in the estate of his mother, and avers, inasmuch as the allegations of complainant's bill in this respect might lead one to believe his mother is dead, that she is now living; and respondent further avers, that his mother at one time by deed of gift to his brother, Geo. T. Sedberry, conveyed certain real estate, and imposed on him the request and direction, that he execute, for the benefit of respondent's wife and children, two certain notes of $1,000.00 each, payable on or before her death or soon thereafter. In furtherance of this, Respondent avers that the notes were executed, one has been paid, and the proceeds turned over to Mrs. Z. C. Sedberry, Trustee, the other note is still unpaid and in the possession of Mrs. Z. C. Sedberry, Trustee.

Respondent emphatically denies, that in collecting and depositing in bank any of the funds of the said Z. C. Sedberry, Trustee, either from the proceeds of the farm or otherwise, that it was for the purpose of defrauding, delaying and hindering his individual creditors; but that said bank account was kept for the purpose of transacting the business in connection with the farm solely for the benefit of said Mrs. Z. C. Sedberry, Trustee.

Respondent avers, that said Mrs. Z. C. Sedberry, Trustee, permitted him to pay some of his individual obligations out of said bank account, and such payments were made from time to time, and have not as yet been repaid to Mrs. Z. C. Sedberry, Trustee, and while an accounting has not been demanded by Mrs. Z. C. Sedberry, Trustee, upon an accounting with this respondent he is indebted to Mrs. Z. C. Sedberry, Trustee, for such amounts so paid.

IV

Respondent denies that the property located upon said farm which was sold by agreement, after his adjudication in bankruptcy, as alleged, was, or is, his property, or that he treated same as his property; and avers that said property was owned by Mrs. Z. C. Sedberry, Trustee, and was used in connection with said farm.

Respondent admits that his co-defendants W. H. Sedberry, J. B. Sedberry and Catherine Sedberry Overall are the only children of himself and his wife, Mrs. Z. C. Sedberry.

Respondent denies, that Mrs. Z. C. Sedberry is past the age of bearing children.

Respondent again denies, that said deed creating said trust estate in said land was taken with the purpose on respondents part of hindering, delaying and defrauding creditors, either existing or subsequent creditors, and further denies that at the time said deed was executed he had any existing creditors; and respondent avers, that the title to said farm is as shown in said deed; and further denies that he owned same in fee, or has any interest in same otherwise than as shown in said deed creating said trust.

V

Respondent denies, that the control of said farm was exercised by him individually, or that he owned same individually; but avers that said farm has been operated and controlled in accordance with the terms of said trust, as set out in the clause quoted from the deed on page 13 of said original bill.

Respondent now here generally denies all allegations of said bill not herein specifically admitted or denied as if same had been by him specifically denied.

And now having fully answered, respondent prays to be hence dismissed with his reasonable cost.

This is my answer.

J. H. Sedberry,
Respondent.

(Signed)
Avery Handly,
J. C. Eggleston,
W. J. Smith,
Solicitors for Respondent.

ANSWER OF DEFENDANT SEDBERRY'S OTHER THAN BANKRUPT IN CHANCERY COURT CASE AT FRANKLIN—Filed Dec. 10, 1917.

The Joint and Separate answer of Mrs. Z. C. Sedberry, individually and as Trustee, W. H. Sedberry, J. Bernard Sedberry, Falley Overall and Catherine Sedberry Overall, by her husband and next friend, Falley Overall, to the bill of complaint filed against these respondents, et al., in the Chancery Court at Franklin, on the —— day of October, 1917, in the above styled cause.

For answer to so much and such parts of said bill as these Respondents are advised it is necessary or material for them to make answer, and reserving all proper exceptions to the mis-statements and inaccuracies set out in said original bill, for answer thereto they say:

I

These Respondents neither admit nor deny the allegation with reference to the alleged bankruptcy proceedings involving the estate of J. H. Sedberry; the appointment of complainant, Thomas G. Watkins as Trustee thereunder, or any of the other allegations of said bill with reference to said bankruptcy matters, except that Respondents Z. C. Sedberry and W. H. Sedberry were called before Honorable Lee Brock, Referee in Bankruptcy and examined with reference to the ownership, management and control of the farm described in Complainant's bill.

Respondents admit the transfer of the track of land of 337 acres by W. J. Zellner and wife to Mrs. Z. C. Sedberry, Trustee.

Respondent, Mrs. Z. C. Sedberry, in this connection would state and show, that if by Complainant's allegation, "Defendant J. H. Sedberry, the bankrupt procured a conveyance to be made by W. J. Zellner and wife to Z. C. Sedberry, etc." It is meant or intended to be understood that J. H. Sedberry acted in connection with said transfer in any other way than simply as the representative of this Respondent, such allegation is denied, and pronounced false and untrue. This Respondent further positively and emphatically denies the allegation that she as trustee or individually did not pay any part of the purchase price of said farm, and states the fact to be that individually and as trustee, out of her individual means, and the products of said farm, she paid the entire purchase price thereof.

Respondent would state in this connection, that she has not kept a strict account of the sale of products from the farm, having intrusted these matters to her husband,

J. H. Sedberry, to manage and look after for her, but she knows that the farm has been productive; that it has been well cultivated; that profitable crops have been grown, and the proceeds thereof applied by her said husband and representative on the payment of the notes given for the purchase price of the place. The $5,000.00 paid in cash was borrowed by Respondent, at the time of the purchase of the farm, and her note given for this money was afterwards paid in full out of the individual means of this Respondent.

As above stated, Respondent since the purchase of said farm has intrusted the management of same to her husband, J. H. Sedberry, and she has not undertaken to interfere with his management of same, because of the fact that she considered her husband more capable of looking after, managing and operating said farm than she was herself. She positively denies, however, that she ever at any time admitted that, or intended to admit, that J. H. Sedberry handled, ran or operated said farm otherwise than as the agent and representative of Respondent.

Respondent does not recall having at any time admitted under oath, or otherwise, "that she had no property or funds of any kind or character or description at the time she married defendant, J. H. Sedberry, nor has she received any funds or property of any kind, character or description since her marriage to defendant, J. H. Sedberry, other than the funds or property which the said J. H. Sedberry may have given her"; she does not here deny, however, that she may have made such admissions, for the fact is that at the time of her marriage to J. H. Sedberry neither she nor he had any property of a consequence, they however, worked energetically and in furtherance of her desire to have a home, they on the 28th day of October, 1897, purchased from John F. Wade, Esq., a tract of land lying in the 11th civil district of Williamson County, containing 300 acres, for the price of $7,500.00, the title to this farm was put in this respondent, and she and her husband, by and out of their earnings paid the purchase price in full.

When the Zellner farm, described in Complainant's bill, was purchased, this Respondent borrowed from W. G. Sedberry, her father-in-law, $5,000.00, with which the cash payment was made to Zellner, afterwards, on the 12th day of September 1903, she sold the Wade farm to W. G. Sedberry at and for the price of $10,000.00 cash, and paid off the $5,000.00 note which she had given for the money borrowed to make the cash payment on the

Zellner farm; it is, therefore, wholly false and untrue, that the $5,000.00 cash payment represented moneys which had been borrowed by defendant, J. H. Sedberry from his father, W. G. Sedberry. It may be true that the negotiations with reference to the borrowing of the $5,000.00 from W. G. Sedberry were conducted by J. H. Sedberry, and he may have received said money and paid same over to W. G. Sedberry, but if such is a fact, he was simply representing this Respondent in this business transaction as her agent and representative, as he had in former, and has since in subsequent, transactions represented Respondent. If respondent ever at any time admitted or stated that the $5,000.00 borrowed from W. G. Sedberry was paid back out of the proceeds or income derived from the Zellner property such statement was made by inadvertence, as Respondent well knew that such money was paid back to W. G. Sedberry out of the proceeds of the sale of her Wade farm above mentioned.

If by the allegation, that all of the property, machinery, tools, stock and other personal property used in the operation and running of the Zellner farm was purchased by defendant, J. H. Sedberry, it is meant or intended to be stated that J. H. Sedberry purchased such property with other means than that belonging to Respondent, said allegation is denied. It is further denied, that J. H. Sedberry exercised all rights or ownership of said personal property on said farm, or any other character or rights of ownership other than such as she permitted him to exercise as her representative and for the benefit of the trust estate which she held in said property. She has admitted, however, and here admits that having full confidence in the business capacity, judgment and integrity of her said husband, J. H. Sedberry, she not only permitted, but committed to his care and attention the exclusive control of said property for the use of herself and the benefit of the trust estate. This Respondent knows nothing of any funds received by J. H. Sedberry from his interest in his mother's estate, and states the fact to be, that the mother of J. H. Sedberry is now living, and still owns and controls her estate, Respondent would state in this connection, that some years ago, a gift of certain notes was made by the mother of J. H. Sedberry, upon the distinct understanding, as Respondent was informed, that the proceeds thereof should inure to the benefit of this Respondent and the children of herself and J. H. Sedberry.

Respondent admits as hereinabove stated, that she intrusted all of her business matters to the management

and control of her husband, J. H. Sedberry, and that as her representative he deposited proceeds of the trust estate to her credit, and drew checks against same for and in the interest of the trust estate. Respondent emphatically denies, however, that she was "merely a figure-head or blind behind which J. H. Sedberry could hide."

Respondent neither admits nor denies the allegations with reference to the payment of individual indebtedness of J. H. Sedberry out of funds belonging to the trust estate held by this respondent, but reiterates that reposing full confidence in the integrity of her husband she permitted him to manage her business affairs almost exclusively, and if it be true, as stated that individual debts have been paid by J. H. Sedberry out of the trust funds, he is indebted to said trust estate to the extent of all such payments, and as herein above stated, Respondent did not keep a close and exact account of the income from said farm, but intrusted same to her representative, J. H. Sedberry, not because of the alleged fact that J. H. Sedberry owned said property and funds, but on the contrary, because of the fact that Respondent had full confidence in the business capacity of her said husband to intrust to him the exclusive management of her said affairs.

Respondent denies, that the personal property on said farm, or any part thereof, belongs to Complainant, the Trustee in Bankruptcy of J. H. Sedberry.

Respondent denies that any part of the growing crops on said farm are the property of J. H. Sedberry, and further denies, that the mortgage executed by this Respondent and W. H. Sedberry on said crops is void and of no force or effect, said mortgage having been executed to secure a loan by the Williamson County Banking & Trust Co. of $2,000.00 made to Respondent and W. H. Sedberry.

Respondent denies the allegation, that "Mrs. Z. C. Sedberry, Trustee, and individually and none of said children have any interest in said property, but that said deed from W. J. Zellner and wife was so written and taken by direction and procurement of J. H. Sedberry for the purpose of hindering, delaying and defrauding the existing and subsequent creditors of defendant J. H. Sedberry," and pronounces same absolutely false and untrue, and states the fact to be that it was well understood and agreed to before the deed from W. J. Zellner was made that the title to said farm should be held by this respondent, Z. C. Sedberry, in trust for the benefit of herself and husband, their then living children (the

other defendants hereinabove named) and such children as might afterwards be born to Respondent and her husband, J. H. Sedberry, and that in pursuance of this arrangement said farm was paid for as hereinabove set out, and has since, and is at the present time, held for the purposes set out in said deed of W. J. Zellner and wife.

This Respondent denies the right of complainant to restrain her in any way from disposing of the personal property on said farm, or growing crops thereon, by injunction or otherwise, or to the proceeds of said farm or any part thereof.

Respondent admits that, there has been no regular or annual accounting between herself and husband and children, or distribution of the proceeds of said farm, because such strict accounting was not contemplated when said farm was purchased, but she would state and show in this connection, that she and her husband and children have lived upon said farm; have had their support solely from its products, that her children have been reared and educated and assisted financially from time to time from the proceeds of the farm.

All of Respondents above named, join in this answer, and state that if there is an allegation or allegations in Complainant's bill contained whereby the bona fides of the whole of said farm and its products by Mrs. Z. C. Sedberry, Trustee, is questioned, which has not been admitted, denied, answered or explained, the same, and all such allegations are here denied and pronounced absolutely false and untrue, as fully as if specifically denied.

Now having fully answered, respondents pray to be hence dismissed with their reasonable cost.

This is our answer.

Z. C. Sedberry,
Individually and as Trustee.
W. H. Sedberry,
J. Bernard Sedberry,
R. Falley Overall,
Katherine Sedberry Overall.

J. C. Eggleston,
W. J. Smith,
Avery Handly,
Solicitors for Respondents.

ANSWER OF DEFENDANT WILLIAMSON COUNTY BANK AND TRUST CO., IN CHANCERY COURT CASE AT FRANKLIN—Filed February 18, 1918.

The separate answer of the Williamson County Banking & Trust Company, to the bill of complaint filed against this Respondent and others, in the Chancery Court at Franklin, on the 24th day of October, 1917, in the above styled cause.

For answer to so much and such parts of said bill as this Respondent is advised it is necessary or material for it to make answer, answering it says:

It neither admits nor denies the allegations in Complainant's bill made on pages four and five of said bill with respect to the source of deposits made with this Respondent, in the name of Z. C. Sedberry, Trustee, and how said funds were checked out, and Respondent demands proof of each and all, and every of said allegations, if by same the interest or rights of this Respondent are in any wise affected.

It is untrue, as alleged on page five of Complainant's bill, that Respondent "realized and treated said account as the property of J. H. Sedberry." The fact being that said account referred to, was understood to be, and was the account of Mrs. Z. C. Sedberry, Trustee, and that her husband, J. H. Sedberry, as her agent, had authority to check on said account.

Respondent denies, that the mortgage, Exhibit "C" to the original bill, executed by Mrs. Z. C. Sedberry, and defendant, W. H. Sedberry, to this Respondent, on certain crops grown on the land in controversy, during the year 1917, was void and of no effect; said mortgage was executed to secure a loan of $2,000.00 made at the time, and not to secure an alleged indebtedness, as stated in Complainant's bill.

Respondent denies, that Complainant is entitled to an accounting with this Respondent as to any transactions with Mrs. Z. C. Sedberry, Trustee, after August 24, 1917, or prior thereto, or that any payments made to, or on account of Mrs. Z. C. Sedberry, by this Respondent, after August 24th, was the property of Complainant, and that Complainant was in any way entitled to same, or any part thereof. Respondent would state, however, in this connection, that it has no objection to making any and all such statements as the Court may require in connection with the account of Mrs. Z. C. Sedberry, Trustee, kept with this Respondent, after August 24th, 1917, or prior thereto.

Respondent denies, that it is due Complainant the

Answer of Defendant J. C. Eggleston in Chancery Court

sum of $2,035.00, or any other amount; denies further, that Complainant has any right to an accounting with Respondent, but as above stated, Respondent does not object to making any showing in connection with said account, that may be required by the Court.

Respondent, also, stands ready to report to the Court all of the facts in connection with the sale of the two warehouses in Thompson Station, under deed of trust executed by J. H. Sedberry, and show in detail the application of the proceeds of said sale.

If there is another, or other allegation, or allegations, contained in Complainant's bill, whereby this Respondent is sought to be charged, or its interest in any wise affected, such allegation, or allegations, are denied as fully as if specifically denied.

Now having fully answered, this Respondent prays to be hence dismissed with its reasonable cost.

J. C. Eggleston,
W. J. Smith,
Solicitors for Respondent.

Williamson Co. Bkg. & Tr. Co.,
By J. F. Eggleston,
President.

ANSWER OF DEFENDANT J. C. EGGLESTON TO ORIGINAL BILL IN CHANCERY COURT CASE AT FRANKLIN—Filed January 16, 1918.

The separate answer of J. C. Eggleston, one of the defendants named in the above styled cause.

For answer to such parts of the bill filed against this respondent and others in this cause, as Respondent is advised it is necessary for him to make answer, answering says:

It is true, as stated in the bill, that under an agreement made between Complainant and defendant, Sed-

berry, it was provided that this respondent should receive and hold the proceeds of the sale of certain personal property, subject to the adjudication of a Court of competent jurisdiction.

Respondent would here state and show, that in pursuance of the terms of said agreement, certain moneys, and notes, representing the proceeds of the sale of certain of the property in question in this cause, was placed in the hands of this Respondent. Respondent would further show that the cash which came to his hands was deposited in bank, where it now remains, with the exception of $—— paid to the Craig Lumber Company, under an order of Court, made in this cause, and the notes which came to Respondent's hands, he has in hand subject to the orders of the Court.

Respondent submits, that he is ready at any time to make a full and complete report and accounting for the cash and notes that came to his hands, when required to do so by order of the Court.

Now having fully answered, this Respondent prays to be hence dismissed with his reasonable cost.

J. C. Eggleston,
Respondent.

W. J. Smith,
Solicitor.

ANSWER OF J. F. EGGLESTON TO ORIGINAL BILL IN CHANCERY COURT CASE AT FRANKLIN— Filed July 9, 1919.

The separate answer of J. F. Eggleston, Trustee, to the bill of complaint filed against this respondent and others in the above styled cause.

For answer to so much of said bill as respondent is advised it is necessary or material for him to make answer, he says: That acting for the Williamson County

Banking & Trust Co., of which he was president at the time, he made a loan on September 4, 1917, of $2,000.00 to Mrs. Z. C. Sedberry, Trustee and W. H. Sedberry, as shown by exhibit "C" to complainants bill. The proceeds of said loan was placed to the credit of Mrs. Z. C. Sedberry, Trustee, in said bank at the time of the execution of the mortgage, exhibit "C" to complainant's bill. Said loan was paid, one note of $1,000, September 25, 1917, and the second note of $1,000, October 25, 1917.

For further answer, respondent states that as trustee, he sold the warehouses at Thompson Station, under mortgage mentioned in complainant's bill, which mortgage was made on the —— day of ——, 1915, to secure certain indebtedness of J. H. Sedberry to the Williamson County Banking & Trust Co., that said sale was had under and in pursuance of the terms and conditions of said mortgage or trust deed and the proceeds of said sale applied to the expense of sale and the indebtedness secured by said mortgage. Respondent would show in this connection that said sale was had after J. H. Sedberry had been adjudicated a bankrupt under an agreement made by the trustee in bankruptcy with respondent, a copy of which is filed as exhibit "D" to complainant's bill and is here referred to for its contents and provisions.

Respondent stands ready to respond fully to any inquiry or requirement by the Court as to the disposition of the proceeds of the sale of the warehouses.

Now having fully answered, respondent prays to be hence dismissed with reasonable cost.

J. F. Eggleston, Trustee,
By J. C. Eggleston,
Attorney.

ABRIDGEMENT OF THE TESTIMONY READ IN EVIDENCE IN THE CHANCERY COURT CASE OF —THOMAS G. WATKINS, TRUSTEE, vs. J. H. SEDBERRY, ET AL., IN THE CHANCERY COURT AT FRANKLIN, TENNESSEE—Filed December 21st 1920.

A complete transcript of the record in the bankruptcy cause of—IN THE MATTER OF J. H. SEDBERRY, BANKRUPT—including the general examination of the bankrupt and certain members of his family, was filed, used, and read in evidence in the Chancery Court case at Franklin, Tennessee. In addition, there were depositions of other witnesses, and other proof introduced, consisting of certified copies of records.

In the general examination of J. H. Sedberry, and of his wife, Mrs. Z. C. Sedberry, and the deposition of T. J. Timmons, it is admitted that at the time of the marriage of Mrs. Z. C. Sedberry and J. H. Sedberry, Mrs. Z. C. Sedberry had absolutely no property or funds of any kind, character, or description, but lived in the home of T. J. Timmons, and was supported and cared for by him; and the only property or funds she ever received, were such funds and property she received from her husband, J. H. Sedberry, after their marriage.

In the general examination of J. H. Sedberry, it is admitted that in 1893, he was transacting all of his business as J. H. Sedberry, Agent, claiming to act as Agent for his mother; and that he never acted as agent, or had a bank account as J. H. Sedberry, Agent, for any parties other than his mother. And when interrogated as to what duties or acts he performed as Agent for his mother, the only acts or agency that he could show, was that he had borrowed money from his mother. We quote from his general examination, as follows:

> "Q. Then the only business that you transacted for your mother as Agent, as I understand you, was the business of personally, yourself, borrowing some money from her?
>
> A. Yes sir, I tried to be very plain and state it that way."

T. J. Timmons testified that in 1893, J. H. Sedberry was in business with W. H. Timmons, and that W. H. Timmons lost money and that J. H. Sedberry got the profits.

T. J. Stovall testified that in 1898, J. H. Sedberry was doing business as J. H. Sedberry, Agent, claiming to be

Agent for his mother, and stated to J. T. Stovall, that his reason for doing business as Agent, was as follows:

> "Q. What did he (J. H. Sedberry) state with reference to why he was doing business as J. H. Sedberry, Agent?
>
> A. It was on account of a claim of W. H. Timmons against him."

And again:

> "Q. What statement did he make to you about continuing to do business as J. H. Sedberry as Agent, or on account of the claim that W. H. Timmons had against him, in this conversation in the summer of 1898?
>
> A. Why, he stated he would continue to do business as J. H. Sedberry as Agent, as long as W. H Timmons had the claim against him that he had."

Witness Stovall, and the bankrupt, J. H. Sedberry, were in business together for about five months, beginning January, 1899. And the bankrupt, J. H. Sedberry, in 1898, stated to witness Stovall, with reference to a piece of real estate that was in the name of Z. C. Sedberry, Trustee, as follows:

> "Q. Did J. H. Sedberry make any statement to you in the summer of 1898 with reference to why he had taken title to the Wade place in his wife, Zuline, or Mrs. Z. C. Sedberry's name?
>
> A. Yes, he said—I don't know whether it was in 1898 or afterwards—said that he had to put his property in Zuline's name on account of the Timmons claim or debt.
>
> Q. And the reason he put it in his wife's name was on account of the Timmons debt?
>
> A. Yes, sir."

The amount of the Timmons debt was $12,000, according to witness Stovall.

Mr. John R. Aust testified in the Chancery Court case, that W. H. Timmons, a number of years after his business venture with the bankrupt, J. H. Sedberry, consulted witness Aust, as his Lawyer, witness Aust afterwards being administrator of W. H. Timmons, deceased, and that W. H. Timmons was making claim to his lawyer, that J. H. Sedberry was indebted to him in a large amount. And that the reason W. H. Timmons did not

make efforts to collect this large sum of money due him from Sedberry, the bankrupt, was on account of the fact that he did not think that if he secured judgment, that he would be able to make anything out of it.

The general examination of J. H. Sedberry, bankrupt, developed the fact that during the years approximately necessary for the Statute of Limitations of six years to run, that J. H. Sedberry was doing business as Agent, and that his only agency was that of having borrowed some $900.00 from his mother. He admits that he deposited funds that he claimed belonged to Z. C. Sedberry, Trustee, to his account as J. H. Sedberry, Agent for his mother. And in his general examination, he states that the one-half of the business owned by himself and Stovall was not owned by him individually, but that such one-half was held by J. H. Sedberry, Agent. Said J. H. Sedberry, bankrupt, in his general examination, further admits that the income from the farm, which was in controversy in the Chancery Court case at Franklin, was mingled and kept by him, either by him individually, or as Agent, and that no separate account was kept of such fund. And that previous to January, 1914, there was no account in bank, or account of any nature, in the name of Z. C. Sedberry, Trustee. And that for three or four years prior to November 2, 1914, he transacted business in his own name, J. H. Sedberry, and deposited funds derived from the farm, to his own individual credit.

T. J. Timmons testified that about 1907, or shortly thereafter, J. H. Sedberry (the bankrupt) stated to him in reference to the doing of business in his own name, as follows:

> "Q. Did he make any statement to you about the time he started to do business in his own name?
> A. Yes.
> Q. What statement did he make?
> A. He said he had his head above water now, and could use his own name."

J. H. Sedberry, in his general examination, testified that on November 2, 1914, he opened a bank account in the Williamson County Banking & Trust Company, in the name of Z. C. Sedberry, Trustee, subject to check, J. H. Sedberry. This account was opened by him, J. H. Sedberry, and not by Mrs. Z. C. Sedberry. Practically all checks against this account were signed by J. H. Sedberry, using the signature Z. C. Sedberry, Trustee, he

signing that name. Out of this account, he (J. H. Sedberry) paid his own personal obligations.

Mrs. Z. C. Sedberry testified in her general examination, and T. J. Timmons gave his deposition to the effect, that whenever Mrs. Z. C. Sedberry drew a check upon this account, namely, the Z. C. Sedberry, Trustee, account, in the Williamson County Banking & Trust Company, that instead of signing the check Z. C. Sedberry, Trustee, she signed all checks J. H. Sedberry, by wife.

J. H. Sedberry, in his general examination, testified that he borrowed money from his father with which to buy the farm in controversy in the Chancery Court case. And he further admits that he had the deed to this farm made as it was because he would doubtless fail and owe debts.

Mrs. Z. C. Sedberry admits in her general examination that J. H. Sedberry was to all intents and purposes, and in every respect, exercised all rights of ownership over, said farm, the personal property located thereon, and the proceeds received therefrom. We quote from her general examination, as follows:

> "Q. Then, acting as Trustee for your three children and your husband, you delegated all the authority that you had as Trustee, to your husband?
>
> A. I certainly did.
>
> Q. And he was really the manager, and acted in all matters really, as Trustee himself, did he?
>
> A. Yes; yes, he had the management of it."

J. H. Sedberry, in his general examination, states that he never claimed any of the personal property located on this farm. We quote from his general examination, as follows:

> "Q. Now, have you ever claimed any of it to be your property, from 1902 down to the present time—that is—any of the personal property on that place. Ever claim any of the personal property on that place as your property?
>
> A. No, sir; I have not. But, as I told you, I have run the place for Mrs. Sedberry ever since it was bought.
>
> Q. You do not and have not claimed any of it to be your property from 1902, on down to the present time?
>
> A. No, sir."

Certified copies of mortages were introduced contradicting this statement on the part of J. H. Sedberry as follows:

Abridgement of the Testimony Read in Evidence

One mortgage under date of October 12, 1914, and of record in Trust Deed Book 27, page 472, of the Register's Office of Williamson County, Tennessee, in which mortage, J. H. Sedberry, in his own name, covenanted to be the owner of the personal property included in said instrument, and mortaged the following personal property located on the farm in controversy, to J. F. Eggleston, Trustee, to secure the payment of $2,000, to the Williamson County Banking & Trust Company; such personal property was as follows:

> 1 Blue Mare mule; I Gray Mare mule; 1 Black Mare mule; 1 Brown horse; 2 Dark Bay Mules; 1 Sorrel Work Horse; 3 Mare Ponies, one gray, one gray with white spots; 4 Milch Cows; and 1 Claybank; 1, 5 passenger Chalmers Touring Car; 1 Metz Runabout; 1 Deering Binder; 1 Mower; 1 Hay Binder; 4 Wagons.

A certified copy of a second mortgage, dated October 25, 1913, and of record in Trust Deed Book 27, page 189, of the Register's Office of Williamson County, Tennessee, was also introduced in evidence, and this mortgage showed that J. H. Sedberry, in his own name, and alone executed a mortgage to R. H. Kittrell, Trustee, on certain personal property, as follows:

> 1 Blue Mare Mule, 16 hands high; 1 Horse Mule, 16 hands high; 1 Gray Mare Mule, 15 hands high; 1 Black Mare Mule, 16 hands high; 1 Shetland Stallion, red and white spotted pony; 2 horse ponies, one gray and one brown; 2 Mare Ponies, one gray and one spotted; 1 Gray Mare Pony; 1 Sorrel Horse; 2 Bay Mares; 5 Cows, three of which are spotted, and two, fawn-colored.

We now quote from said mortgage, immediately following the description of the above property, as follows:

> "The same being all of the horses and cows on my place **which I now own**; also, two automobiles, 1, 30 horse power Touring car, a Chalmers make, and the other being a 12 horse, air cold, Metz Runabout. I also mortage the following farming implements:
>
> 1 Hay Bailer; 2 Mowers, one McCormack, and one Deering; 1 McCormack Binder, and 2 Deering

Abridgement of the Testimony Read in Evidence

Binders; 3 Discs; 1 Wheat Drill; 4 Cultivators; 1 Corn Planter; all the plows and harrows **on my farm.**

Said above described property is now **on my farm** in the 11th Civil District of Williamson County, Tenn.

I covenant with the said R. H. Kittrell that I have a good and perfect right to sell and mortgage said property, and that the same is unencumbered in any way.

I further covenant with the said mortgage, that I will not remove said property from **my said farm** in Williamson County, without the consent of said mortagee."

Certified copies of instruments were introduced, showing that the bankrupt, J. H. Sedberry, also mortgaged on October 19, 1912, a traction engine, located on the farm in controversy. And that he likewise, on July 2, 1912, mortgaged a threshing machine, located on said farm.

All of the foregoing mortgages were executed by J. H. Sedberry, alone; and in his own name and his wife, nor any other party, joined in the same.

W. H. Sedberry, the only son, or child, named in the Zellner deed, who was introduced as a witness, stated positively that he had no interest in this farm, or any of the property located thereon.

All of the children named in the Zellner deed, or could by any possibility have any interest in this property, were of age, as of the date of the final decree of the Chancellor in the Chancery Court case.

Proof was also introduced, that on December 30, 1916, there was a settlement made by the mother of the bankrupt, of her estate, which settlement was made during the lifetime of the bankrupt's mother. And by the terms of this settlement, the bankrupt, J. H. Sedberry, received two notes of $1,000 each, such notes being received by him on December 30, 1916. One of these notes was discounted by the bankrupt and he received certain mules therefor. These mules belonged to him and were located on the farm in controversy, on August 24, 1917, the date of the filing of the Voluntary petition in bankruptcy. These mules were, however, not scheduled. The other $1,000 note, J. H. Sedberry testified that he transferred to Z. C. Sedberry, Trustee. Mrs. Z. C. Sedberry, in her general examination stated, however, that this note had never been transferred to her.

Abridgement of the Testimony Read in Evidence

A crop of turnip seed was being grown upon this farm at the time it was placed in the hands of receivers, and D. M. Ferry & Co., of Detroit, Mich., had a written contract with the bankrupt, under the terms of which contract, they were to receive all the seed grown, and to pay therefor, 13 1/2 cents per pound. The Trustee declined to carry out this contract as the price of turnip seed had advanced to about 40 cents per pound, and that possibly the Chancellor at Franklin might decree that the Trustee was entitled to the personal property and growing crops upon the farm, on account of the conduct and exercise of ownership over such crops and personal property by the bankrupt, and at the same time, deny recovery as to the farm itself, in which event, the D. M. Ferry Company claim for the difference between 13 1/2 cents per pound, and 40 cents per pound, would become very material, because there would not be sufficient to pay the creditors in full; and of course, D. M. Ferry & Co. would only receive their pro rata distribution. This petition of D. M. Ferry & Co. was filed on May 18, 1918. Demurrers were filed to this petition. As the result of such demurrers, D. M. Ferry & Co. amended their petition and sought to claim said seed, not as the property of the bankrupt, but as the property of the bankrupt's wife, Mrs. Z. C. Sedberry, Trustee, through J. H. Sedberry acting as Agent for an unknown principal. To the amended petition, demurrers were filed. These demurrers were argued at length before the Court, and as a result, D. M. Ferry & Co. were required to pay the price for said turnip seed fixed in the written contract, and to execute bond, conditioned to pay the market value of said turnip seed as of the date of the entry of the decree; in no event, to be less than 40 cents per pound, in the event that the Court should hold that J. H. Sedberry, at the time of his bankruptcy, was the owner of said seed, and that his Trustee in bankruptcy thereby became entitled to said seed. As a result of this decree, D. M. Ferry & Co. paid at the time, $5,260.00 to the Receivers in the Chancery Court proceedings, and executed bond for $21,000.00, to pay the difference in price.

The Court, as shown by the final decree, held that the Trustee in bankruptcy was entitled to these seed, and gave judgment against D. M. Ferry & Co., and the Fidelity and Guaranty Company, their bondsment, for $——, the difference in the price of the seed; and D. M. Ferry & Co. have accordingly proven their claim in bankruptcy in this estate, for this amount.

FINAL DECREE OF THE CHANCELLOR IN THE CHANCERY COURT CASE AT FRANKLIN, TENNESSEE—Entered July 31, 1919.

This cause came on to be heard before the Honorable J. C. Hobbs, Chancellor, etc., holding the Chancery Court at Franklin, Tennessee, upon this, the 31st. day of July, 1919, and former days of the Term, upon the Original Bill, Answers of defendants, pro confessos heretofore taken, Petition of D. M. Ferry Company, Answer of defendants thereto and pro confessos duly taken on said petition, and upon the proof on file and the entire record in the cause, and argument of Counsel.

Upon due consideration of all of which, the Court is of the opinion that the rights and equities set up and alleged in the original bill are fully sustained by the proof and that the complainant is entitled to the relief prayed for.

The Court is further of the opinion that J. H. Sedberry filed a petition in bankruptcy in the United States District Court at Nashville, Tennessee, and was duly adjudged a bankrupt on the 24th day of August, 1917; and that complainant Thos G. Watkins was elected, appointed, and qualified as Trustee of the said J. H. Sedberry, bankrupt, and that he is authorized and empowered to prosecute this action.

That defendant J. H. Sedberry in his schedules in bankruptcy, scheduled no assets other than articles which he claimed were exempt, but did schedule liabilities in a large amount.

The Court is further of the opinion that defendant J. H. Sedberry procured a conveyance to be made by W. J. Zellner and wife to Z. C. Sedberry, Trustee, such conveyance appearing of record in Book 23, page 202, in the Register's Office of Williamson County, Tennessee; and that said conveyance was made on January 1, 1902, conveying from W. J. Zellner and wife to Z. C. Sedberry, Trustee, the wife of J. H. Sedberry, a certain tract or parcel of land located in Williamson County, Tennessee, which will be hereinafter described in this decree, and that such conveyance was so made, and done for the purpose of and with the intention to defraud existing and subsequent creditors of J. H. Sedberry.

The Court is further of the opinion that said deed is void on its face as to existing and subsequent creditors of J. H. Sedberry, and was the land of J. H. Sedberry, and that the complainant as his Trustee in Bankruptcy has the title to said land and is entitled to have said land sold, as prayed for in the original bill, and the notes

or proceeds of sale turned over to the complainant to be administered in the United States District Court sitting as a Court of Bankruptcy, at Nashville, Tennessee.

The Court is further of the opinion that all of the income and profits of said farm were the property of defendant J. H. Sedberry and that all of the personal property, household goods, machinery, stock and equipment on, or used in the operation of said farm, were the property of defendant J. H. Sedberry, and that the funds realized from the sale of the personal property on said farm, which funds or notes were turned over to defendant J. C. Eggleston, are the notes and funds of the complainant and that the complainant is entitled to receive from defendant J. C. Eggleston, all of said funds, less such amounts as may have been paid out on account of taxes upon said property, amount paid to the Craig Lumber Company upon former order of this Court, and less the price realized for such exempt articles as may have been sold, in conformity with the agreement under which the sale of said personal property was conducted.

The Court is further of the opinion, that the defendant Williamson County Banking & Trust Company acted in good faith in accepting the mortgage from Z. C. Sedberry, Trustee, to W. H. Sedberry, upon the growing crops upon this farm, such mortgage being executed on September 4, 1917, and that the complainant is not entitled to recover as against them.

The Court is further of the opinion, that the bank in acting as a depository for the funds deposited to the credit of Z. C. Sedberry, Trustee, with it, subsequent to August 24, 1917, acted in good faith, and any right of recovery, and an accounting as to these funds, is denied to the complainant.

The Court is further of the opinion, that the mortgage or deed of trust held by the Williamson County Banking & Trust Company on the two warehouses located at Thompson Station, Tennessee, are valid, and the defendant Williamson County Banking & Trust Company had a right to sell the same and apply the proceeds to the payment of the indebtedness they held against the same.

The Court is further of the opinion, that Receivers were properly appointed in this case.

The Court is further of the opinion that defendants Mrs. Z. C. Sedberry, Trustee, Mrs. Z. C. Sedberry, W. H. Sedberry, J. B. Sedberry, and Catherine Sedberry Overall, have no interest, right, or title in and to said land or personal property set out and referred to in the bill, or to any income or profits realized therefrom.

Final Decree of the Chancellor

The Court is further of the opinion, that the injunction heretofore granted in this cause was properly granted and should be sustained and made perpetual.

The Court is further of the opinion, that the mortgage executed by defendants J. H. Sedberry, Z. C. Sedberry, Trustee, J. B. Sedberry and W. H. Sedberry to R. H. Kittrell, Trustee, upon the farm or real estate set out in the bill, to secure two notes of $2,500.00 each, is valid and should be sustained, and that the balance due on account of said mortgage debt is $2,500.00, with interest from January 10, 1918, payable semi-annually, amounting to $165.64, making the total amount due as of this date, $2,665.64.

The Court is further of the opinion that the title to the turnip seed set out and referred to in the petition filed herein by D. M. Ferry Company was in J. H. Sedberry and passed to his Trustee in Bankruptcy, the complainant in this cause, and that the complainant was entitled to said turnip seed; but that under the Agreed Decree heretofore entered in this cause on June 20, 1918, in Minute Book 5, page 122, said seed were turned over to the petitioner D. M. Ferry Company, and the Court is of opinion that the complainant is entitled to a judgment against the said D. M. Ferry Company and their bondsmen, the United States Fidelity & Guaranty Company, for the difference between the market value of said seed namely, 40 cents per pound, and the contract price, namely, 13 1/2 cents per pound, on 39,163 pounds of turnip seed, which at 26 1/2 cents per pound would make $10,378.20; together with interest from the date of said agreed decree, namely, June 20, 1918, that complainant would be entitled to judgment against petitioner D. M. Ferry Company and their bondsmen, the United States Fidelity & Guaranty Company.

In all the foregoing recitals, the Court so finds and decrees.

It is accordingly ordered, adjudged and decreed by the Court:

1. That the conveyance heretofore made by W. J. Zellner and wife to Z. C. Sedberry, Trustee, on January 1, 1902, of record in Book 23, page 202, of the Register's Office of Williamson County, Tennessee, conveying said land is void as against the complainant in this cause, and that the real title to said land, personal property located thereon, and income and profits thereof, was and has been in defendant J. H. Sedberry, from the time of the taking of said deed, namely, January 1, 1902; and that upon the bankruptcy of defendant J. H. Sedberry, and appoint-

ment and qualification of his Trustee, the complainant in this cause, the title to said property passed to and vested in the complainant Thos. G. Watkins, Trustee in bankruptcy of J. H. Sedberry, by operation of law.

2. It is further ordered, adjudged and decreed that all right, title and interest that defendants J. H. Sedberry, Mrs. Z. C. Sedberry, Trustee, Mrs. Z. C. Sedberry individually, W. H. Sedberry, J. Bernard Sedberry, Catherine Sedberry Overall, and Falley Overall, and any and all other parties in and to the following described tract of land:

> Located at or near Thompson Station, Tennessee, such real estate being more particularly described as follows:
>
> Lying in the 11th Civil District of Williamson County, Tennessee, beginning on the S. E. corner of lot No. 1 of the Pointer lands, Mrs. Pointer's N. W. corner, and in the center of the Franklin & Spring Hill turnpike; thence with the center of the same N. 11 1/4 E. 6 poles N. 39 E. 48 poles N. 34 E. 59 poles, N. 11 E. 11 1/2 poles, N. 10 1/2 E. 71 1/4 poles to the S. W. corner of the schoolhouse lot; thence S. 87 1/2 E. 38 1/4 poles to the S. E. corner of the same; thence N. 10 1/2 E. 12 3/4 poles to the N. E. corner of the same in the Thompson Station and Bethesda road; thence S. 87 1/2 E. 213 poles to J. H. Porter (formerly R. B. Evans N. W. Corner); thence with said Porter's W. B. S. 1/2 W. 190 1/2 to his S. W. corner in L. D. Banks N. B; thence with said Banks North boundary N. 89 W. 205 poles to his N. W. corner; thence N. 88 1/2 W. 130 poles to the beginning containing 337 acres.

be, and the same is divested out of them and each of them and vested in the complainant, Thos G. Watkins, Trustee in bankruptcy of J. H. Sedberry.

Said land above described, the title to which has above been vested in complainant Thos. G. Watkins, Trustee in bankruptcy of J. H. Sedberry, Bankrupt, is, however, subject to the debt or mortgage owing on account of the deed of trust executed by Z. C. Sedberry, Trustee, J. H. Sedberry, J. B. Sedberry and W. H. Sedberry to R. H. Kittrell, Trustee, the amount due upon said mortgage being, by agreement, $2,500.00 with interest from January 10, 1918, payable semi-annually; the total amount due thereon being as of this date, $2,665.64.

It is further ordered, adjudged and decreed that de-

fendant J. C. Eggleston pay to the Receivers in this cause, L. W. Buford and Newt. Cannon, Jr., all funds in his hands: being the proceeds from the sale of the household goods, machinery, equipment, stock, crops, personal property and effects on or used in connection with the land hereinbefore described.

The defendant, J. C. Eggleston, under the agreement of all parties, had turned over to him, the sum of $2,-184.04, as the proceeds from the sale of the property above referred to, and the said defendant J. C. Eggleston has paid out from said funds, the following amounts:

For taxes	$356.43
Advertisement of sale	16.50
Craig Lumber Co., upon Order of the Court	181.96
Total	$554.89

for which he is allowed credit. And in addition, it appearing that certain of the articles sold were exempt articles, and that the purchase price realized for all of the articles which the defendant J. H. Sedberry would be entitled to claim as exempt, by agreement of all parties, is $1,126.43, for which amount defendant J. C. Eggleston will account to defendant J. H. Sedberry; and the balance remaining in the hands of defendant J. C. Eggleston, after credit for the payment of taxes and advertising and the amount due the Craig Lumber Company, and the amount representing the selling price of the exempt articles, such balance being $502.72, the defendant J. C. Eggleston will forthwith pay to said Receivers.

4. It is further ordered, adjudged and decreed that the mortgages or deeds of trust held by the Williamson County Banking & Trust Company on the two warehouses located at Thompson Station, Tennessee, are valid and the complainant has no interest therein.

5. It is further ordered, adjudged and decreed that defendants Mrs. Z. C. Sedberry, Trustee, Mrs. Z. C. Sedberry, W. H. Sedberry, J. B. Sedberry, Catherine Sedberry Overall, and Fallay Overall have no right, title or interest in and to said farm, or in any of the personal property set out and referred to in the bill, or to any income or profits realized therefrom.

6. It is further ordered, adjudged and decreed that Receivers were properly appointed in this cause, and their appointment is ratified and approved in all respects; and that the injunction heretofore granted in this

cause and now in force, was properly granted and should be sustained; and said injunction is sustained and made perpetual.

7. It is further ordered, adjudged and decreed that the mortgage or deed of trust executed by defendants J. H. Sedberry, Z. C. Sedberry, Trustee, J. B. Sedberry and W. H. Sedberry to R. H. Kittrell, Trustee, upon the land hereinbefore ordered to be sold, to secure two notes of $2,500.00 each, is valid and the same is sustained.

8. It is further ordered, adjudged and decreed that complainant have and recover of defendant J. H. Sedberry and Mrs. Z. C. Sedberry, all the costs of this cause except the costs incident to the petition filed by D. M. Ferry Company, for which let execution issue.

9. It is further ordered, adjudged and decreed that in conformity with the decree heretofore rendered in this cause, on the 20th day of June, 1918, in Minute Book 5, page 122, that D. M. Ferry Company are liable on their bond to L. W. Buford and Newt. Cannon, Jr., Receivers in this cause, in the full and just sum of $10,378.20, together with interest from June 20, 1918, the date of the agreed decree above referred to; said sum being the difference between 13 1/2 cents per pound for the turnip seed, the price per pound set out in the contract, which sum has heretofore been paid into Court, and 40 cents per pound for said turnip seed, the agreed market value of said turnip seed as set out in said decree; there being 39,163 pounds of turnip seed at 26½ cents per pound—the difference between 13½ cents per pound and 40 cents per pound—making $10,378.20, together with interest from June 20, 1918, the date of the agreed decree, to date; such interest amounting to $691.98, making the total amount due on said bond of $11,070.18.

It is accordingly ordered, adjudged and decreed that L. W. Buford and Newt Cannon, Jr., Receivers in this cause, have and recover of D. M. Ferry Company and their bondsmen, the United States Fidelity & Guaranty Company, the sum of $11,070.18, and all the costs of this cause incident to the filing of the petition of D. M. Ferry Company, for which let execution issue.

10. It is further ordered, adjudged and decreed that all funds now in the hands of L. W. Buford and Newt. Cannon, Jr., Receivers in this cause, belong to the complainant, as does all of the growing crops and properties of every character now in their possession or that may hereafter come into their possession. And it is further ordered, adjudged and decreed by the Court, that in conformity with this decree, the said L. W. Buford and

Newt. Cannon, Jr., Receivers in this cause, will pay over to complainant, or his Solicitors, all funds in their hands or that may hereafter come into their hands, and turn over all property in their possession or that may come into their possession, after all costs in this cause shall have been paid.

It is agreed between the complainant, Thos. G. Watkins, Trustee in bankruptcy of J. H. Sedberry, and defendants, that this decree is and shall be final as to all matters, and none of the parties hereto shall prosecute an appeal, or seek any revision thereof.

R. H. Crockett,
Jos. R. West,
Jordan Stokes, Jr.
Solicitors for Compt.

J. C. Eggleston,
Avery Handley for J. H. Sedberry,
Mrs. Z. C. Sedberry, Trustee,
Mrs. Z. C. Sedberry,
J. B. Sedberry,
W. H. Sedberry,
Catherine S. Overall,
Falley Overall.
Deft.

PETITION OF SEDBERRYS TO FIX COUNSEL FEES
—Filed Dec. 18, 1919.

To the Honorable Lee Brock, Referee:

The petition of J. H. Sedberry, Bankrupt herein, and of Z. C. Sedberry, Trustee and individually, J. B. Sedberry, W. H. Sedberry, Catherine Sedberry Overall and husband, Falley Overall, respectfully shows:

Petition of Sedberrys to Fix Counsel Fees

I.

That petitioner, J. H. Sedberry, was on his voluntary petition in bankruptcy, filed in this cause, adjudicated a bankrupt on August 24, 1917. That said proceedings are now pending and the estate is being administered by this Honorable Court.

That in January, 1902, there was deeded by W. J. Zellner and wife to Z. C. Sedberry, Trustee, a certain tract of land lying in Williamson County, Tennessee, for the consideration of $18,000.00, of which amount $5000.00 was in cash and the balance by deferred payments. This property was conveyed to your petitioner, Z. C. Sedberry, Trustee, in trust, as follows:

> "To the said Mrs. Z. C. Sedberry, Trustee, upon the uses, trusts and conditions hereinafter set out; said Z. C. Sedberry, Trustee, will hold said tract of land for the use and benefit of herself and husband, J. H. Sedberry, and the children of said Z. C. Sedberry by her present husband, J. H. Sedberry such as may hereafter be born to said couple, as well as well as those now living. Said Z. C. Sedberry, Trustee, is further authorized and empowered to sell and convey said land or any part of the same for the purpose of reinvestment; but in case of such sale the proceeds shall be reinvested in other lands to be held subject to the same conditions and limitations herein set out; except such of said proceeds as may be applied to the payment of the purchase money for the tract of land herein conveyed.
>
> "It is further provided, in order to perfect any sale of said land or any portion of same by the said Trustee, it shall be necessary for her husband, J. H. Sedberry, to join her in the execution of the deed conveying said tract of land or any part of same, sold under the provisions of this deed."

Said deed was exhibited on and made a part of the examination of said petitioners, J. H. Sedberry and Z. C. Sedberry, in these proceedings.

At the time petitioner, J. H. Sedberry, prepared his schedules aforesaid he was of the opinion and was so advised by his counsel that whatever interest he had in and under said deed aforesaid was not such property or asset of his as was required to be listed in his schedule of assets in bankruptcy.

Said deed was duly recorded in the Register's Office of Williamson County, Tennessee, on the 11th day of

February, 1902, and since that time and up to the filing of said petition in bankruptcy and thereafter, said property was used and occupied by your petitioners pursuant to the purposes of said trust.

Subsequent to your petitioners' examination in bankruptcy and the election of Thos. G. Watkins, Esq., Trustee herein, suit was brought by said Trustee in the Chancery Court of Williamson County, Tennessee, against your petitioners and others, attacking said deed as fraudulent—the original bill being filed in October 24, 1917. Receivers were appointed in said Chancery cause and they had charge of the farm thereafter.

Said Chancery cause was heard in Franklin in the summer of 1919. The purpose of said suit was to have the Court adjudge and decree that the farm in question and the property thereon was the property of the bankrupt, J. H. Sedberry; that said deed hereinabove referred to was a void and fraudulent conveyance, both as to existing and subsequent creditors. The Chancellor announced, after having taken the case under advisement, that he was of the opinion that complainant should have a decree.

Thereafter solicitors for the Trustee herein and the solicitors for your petitioners met for the purpose of drafting the decree. During that conference at Franklin, petitioners' solicitors were finally convinced that the bankrupt had a vested interest in the farm but that the same was contingent as to amount, because there might be other beneficiaries born; and that there was some interest which creditors could reach in said farm as the property of the bankrupt and inasmuch as the value of said farm had increased considerably and as said bankrupt's interest in the farm and its products practically one-fifth thereof would be nearly enough to pay the indebtedness of J. H. Sedberry. On consideration all the petitioners and particularly petitioners, Z. C. Sedberry, W. H. Sedberry, J. B. Sedberry and Catherine Sedberry Overall (inasmuch as their husband and father owed the debts scheduled), were willing to enter into an agreement for themselves and the bankrupt with solicitors for the Trustee, to forego their right of appeal and allow title to the land to be decreed to the Trustee, upon condition that the true amount of the bankrupt's debts be arrived at and the costs and expenses of the bankruptcy proceedings, including an attorney's fee to the solicitors for the Trustee, to be fixed by the Court of Bankruptcy; and upon the further condition that the funds in the hands of the said Chancery Court receivers should be turned over to the Trustee, to be distributed by order of the

Court of Bankruptcy as a partial dividend to the creditors whose claims had been duly filed and allowed; and upon the further condition that, when the amount necessary to pay off the remainder of the claims and after the dividend aforesaid, together with costs of the administration, had been ascertained, the Trustee would join with petitioners in a mortgage on said property to raise the necessary sum in order that the bankruptcy case might be finally settled and wound up.

As one of the conditions for this settlement, it was agreed that said farm should not be sold under the Court's decree but that time would be allowed, within which to arrive at the amount of the bankruptcy claims, based on provable debts that had been filed, and the costs and expenses should be ascertained, including attorneys' fees to the solicitors for the Trustee, the last to be fixed by the Court of bankruptcy.

Relying on said agreement a decree was then entered in said Chancery cause whereby your petitioners agreed and bound themselves "not to prosecute an appeal or seek any revision thereof"; and the title to said farm was decreed to be the property of petitioner, J. H. Sedberry, and the title to same in his trustee herein.

In this connection petitioners would show that one of the conditions upon which the foregoing settlement was assented to by petitioners' solicitors was that, in so far as the debt of the Broadway National Bank, which had been filed in the bankruptcy proceedings for something in excess of $7100.00 and which was then in litigation in the Chancery Court of Williamson County, was concerned, that the true amount of said indebtedness to said bank should be ascertained by arriving at the actual amount of money borrowed from said Bank by said J. H. Sedberry with interest, and adding thereto the costs the said bank had been put to in its efforts to collect said debt, and such sum should be treated as the amount of said bank's indebtedness and proved in bankruptcy.

II.

Petitioners would further show that, after this settlement was entered into, and an announcement of same made to this Honorable Court, and upon the request of the Court that an agreement be made, if possible, between respective solicitors as to what the fee of the solicitors for the Trustee should be, it was ascertained by subsequent interviews that it was impossible for petitioners to agree to the sum asked by the attorneys for the Trustee which was at first $49,000.00 and finally re-

duced to $40,000.00, a sum so exorbitant in view of the services rendered as to be out of question, and it therefore has been necessary to appeal to this Court to fix said fee in order to carry out the terms of the agreement heretofore recited.

On the settlement of the amount of the Broadway National Bank's claim (all other claims proved being undisputed, and the years time within which to file claims having expired, so that if there be any creditor whose claim might not have been scheduled, though petitioners do not think any were left out) it will only be necessary to effectuate the above settlement and to arrive at the proper amount to be raised on said mortgage, that this Court fix the fee of the attorneys for the Trustee herein.

Petitioners have already perfected arrangements whereby they can and will immediately raise by mortgage the sum necessary to carry out the agreements heretofore recited.

Wherefore your petitioners pray that they be permitted to file this petition in this cause; that this Honorable Court by its orders and decrees fix the amount of the indebtedness of said bankrupt, upon the provable claims filed herein, as finally allowed; ascertain and fix the expenses and costs of these proceedings in bankruptcy; and finally fix a reasonable attorney's fee for the attorneys for the Trustee for their services as rendered; and, upon the total amount due being ascertained with proper allowance given for the funds now in the hands of the Trustee, that the Trustee herein be directed to join with your petitioners in executing a mortgage on the land herein above referred to, in order to raise the necessary fund with which to fully pay off and discharge all the claims of the creditors herein, the costs and expenses of these proceedings, including said attorney's fees; and that the cause be thereupon dismissed. Your petitioners pray for general relief and petitioners will ever so pray.

J. H. Sedberry
Z. C. Sedberry
J. B. Sedberry
W. H. Sedberry
Catherine Sedberry Overall
Falley Overall

Petitioners,
By Norman Farrell,
Attorney.

Answer of Thos. G. Watkins, Trustee, to Petition

State of Tennessee }
County of Davidson }

Avery Handly makes solemn oath that he is one of the attorneys for petitioners, and that the statements of fact in foregoing petition is true to the best of his knowledge, information and belief.

Avery Handly.

Sworn to and subscribed before me this December 16, 1919.

Walker H. Gill,
Notary Public.

(seal)

ANSWER OF THOS. G. WATKINS, TRUSTEE TO PETITION OF BANKRUPT, ET AL., TO FIX ATTORNEY'S FEE—Filed Jan. 10, 1920.

The ANSWER of Thomas G. Watkins, Trustee, to the Petition filed in this cause by J. H. Sedberry, the bankrupt, and Z. C. Sedberry, Trustee, and individually; J. B. Sedberry, W. H. Sedberry, Catherine Sedberry Overall and husband, Falley Overall, such Petition being filed on December 18th, 1919.

The Trustee for answer to so much and such parts of said Petition as he is advised it is material for him to answer, answering says:

I.

As to the allegation in Paragraph One of the Petition, to the effect that J. H. Sedberry upon his Voluntary Petition was adjudged a bankrupt on August 24, 1917, and that proceedings are now pending, and that the estate is being administered in this Honorable Court, it is true.

The further allegation in Paragraph One, reciting that the farm located in Williamson County, Tennessee,

the fee simple title to which is now held by him as Trustee in bankruptcy, was deeded by W. J. Zellner and wife to Z. C. Sedberry, Trustee, in January 1902, and the excerpts copied in said Petition from said deed from Zellner and wife to Mrs. Sedberry, Trustee, is correct.

It is true that said deed was exhibited at and made a part of the general examination of the bankrupt, J. H. Sedberry, and Mrs. Z. C. Sedberry, his wife, in these proceedings, but said deed was procured and put in evidence by virtue of the efforts and through the examination conducted by Mr. Jordan Stokes, Jr., as Attorney for the Trustee in bankruptcy of his estate.

As to what was the opinion of Mr. Sedberry, or the advice given him by his Counsel with regard to any interest that he had under this deed that should have been scheduled, the Trustee in Bankruptcy knows nothing, except the fact that he did not schedule anything, or any interest whatsoever in this property.

As to the allegation: That said deed was duly recorded in the Register's office of Williamson County on the 11th day of February, 1902, and that since that time and up to the filing of said petition in bankruptcy and thereafter, said property was used and occupied by the petitioners, pursuant to the purposes of said trust, the Trustee for answer to this allegation, would state: That the Chancery Court at Franklin, Tennessee, held that the purposes shown by said deed and the facts surrounding its procurement by Sedberry, proved to the satisfaction of that Court that such purposes were fraudulent in their inception, and that the execution of the deed was in fact procured by said Sedberry to be made for the purpose of defrauding his subsequent creditors, and that that was his intent at the time he procured said deed to be made; and if petitioners would have the Court to understand, that by the statement—that this farm has been used and occupied by the petitioners *pursuant to the purposes of said trust*—to mean the purposes as adjudicated by the Chancellor at Franklin, namely: for the fraudulent purpose and intent to defraud subsequent creditors, then your Trustee admits this allegation of the petition.

It is true that subsequent to the petitioners' examination in bankruptcy and the election of your Trustee herein, that suit was brought by your Trustee in the Chancery Court of Williamson County, Tennessee, against the petitioners named in the petition, and others, attacking said deed as fraudulent and void as against him; and that the original bill was filed on October 24, 1917. It is true that Receivers were appointed in said Chancery

cause at Franklin, Tenn., and that from and after their appointment on October 24, 1917, they had charge of said farm.

It is true that one of the purposes of the suit at Franklin, was to have the Court adjudge and decree that the farm in question and the property thereon was the property of the bankrupt, J. H. Sedberry, and rightfully belonged to your Trustee, as his Trustee in bankruptcy, and that said deed under which Z. C. Sedberry was seeking to sold said property, was fraudulent and void as against your Trustee as Trustee in Bankruptcy of J. H. Sedberry.

It is true that the Chancellor announced that he was of the opinion that complainant should have a decree, and he also announced that the bankrupt was guilty of actual fraudulent intent at the time he procured the conveyance to be made on January 1st, 1902, and his conclusions and findings are set forth in a decree entered in that cause, a copy of which is hereto attached and made a part of this Answer as Exhibit "A."

Your Trustee is advised and so states, that his Counsel did not meet with petitioners' Counsel for the purpose of drafting a decree; but that the Chancellor at Franklin, Tenn., having found all matters in favor of your Trustee's contention, as set forth in his Bill, and having ordered a decree drawn accordingly, that his Counsel drafted a decree and went to Franklin and submitted the same, as is usual and customary, to the then Solicitors for the petitioners and other defendants in the Chancery Court case at Franklin, Tenn., who raised objection to certain provisions in the decree, particularly with reference to the adjudication as against the Williamson County Banking & Trust Company, and the order of a reference with regard to the liability of the bank.

Your Trustee is further advised and so states, that the question of the petitioners' solicitors being firmly convinced that the bankrupt had a vested interest, is an anomaly, as the Chancellor had already decided most emphatically that the entire estate was the estate of the bankrupt and passed to your Trustee, as his Trustee in Bankruptcy. Whatever may be the opinion that such Solicitors had as to the bankrupt having a contingent interest that might be reached, is utterly immaterial, as the Court had, as heretofore stated, already adjudicated and ordered the entrance of a decree vesting the title to this property in your Trustee, as the Trustee in Bankruptcy of J. H. Sedberry, bankrupt.

It is true that there was a large personal estate created from the products of this farm, due to the efforts

Answer of Thos. G. Watkins, Trustee, to Petition of the Receivers appointed under the Bill filed by your Trustee.

The petition makes the following allegation:

> "On consideration all the petitioners and particularly petitioners, Z. C. Sedberry, W. H. Sedberry, J. B. Sedberry and Catherine Sedberry Overall (inasmuch as their husband and father owed the debts scheduled), were willing to enter into an agreement for themselves and the bankrupt with solicitors for the Trustee, to forego their right of appeal and allow title to the land to be decreed to the Trustee, upon condition that the true amount of the bankrupt's debts be arrived at and the costs and expenses of the bankruptcy proceedings, including an attorney's fee to the solicitors for the Trustee, to be fixed by the Court of Bankruptcy; and upon the further condition, that the funds in the hands of the said Chancery Court receivers should be turned over to the Trustee, to be distributed by order of the Court of Bankruptcy as a partial dividend to the creditors whose claims had been duly filed and allowed; and upon the further condition that, when the amount necessary to pay off the remainder of the claims and after the dividend aforesaid, together with costs of the administration, had been ascertained, the Trustee would join with petitioners in a mortgage on said property to raise the necessary sum in order that the bankruptcy case might be finally settled and wound up."

Your Trustee is advised and states: That if by this allegation petitioners mean to infer that his solicitors in the Chancery Court case participated in and agreed as to said statements and conditions, that it is utterly false and untrue, and your Trustee attaches hereto and makes a part of this Answer, affidavits of Mr. Jordan Stokes, Jr., Mr. Jos. R. West and Mr. R. H. Crockett, his Solicitors, who are the only parties representing him in the Chancery Court case, setting out the facts attendant upon the discussion of the decree. And your Trustee would further state, that immediately upon the return of the said Jordan Stokes, Jr., to Nashville, Tenn., that he acquainted him with the facts, as embodied in said affidavits.

Your Trustee is advised that it is true, that his Solicitors stated that said farm would not be sold under the Orders of the Bankrupt Court, for a period of sixty (60) days from the entry of the decree in order to allow Solici-

Answer of Thos. G. Watkins, Trustee, to Petition

tors for the bankrupt and the petitioners, ample time to file any petition, or take any steps they saw fit, in this Honorable Court. But this was the extent of any agreement made by your Trustee's Solicitors, or any one authorized to act for him. Your Trustee denies that except as above stated, that it was agreed by his Solicitors, or anyone else authorized to bind him, that said farm would not be sold by the Court's decree; but on the contrary, your Trustee is advised and states, that the decree as originally drawn, provided for the sale of this farm by the Receivers in the Chancery Court case at Franklin, and objection thereto was made by the Solicitors for the petitioners and defendants in the Chancery Court, because: That this would result in the payment of two commissions upon the purchase price of this farm; namely, a commission to the Receivers at Franklin, and also, the commission provided for the Trustee and Referee in Bankruptcy. And it was at their instance and request, that instead of providing for a sale of this farm by the Receivers of the Chancery Court, that the title to the farm was vested absolutely in your Trustee, as Trustee in Bankruptcy of J. H. Sedberry, with the agreement only, as stated above, that your Trustee would not advertise the property for sale, for a period of sixty (60) days from the date of the entry of the decree, as stated above.

Your Trustee is advised and so states: That any statement to the effect that the petitioners relied upon any agreement other than the mere statement, that your Trustee would refrain from advertising for sixty (60) days, or that they were influenced by your Trustee's Solicitors to sign said decree of the Chancery Court, binding themselves not to prosecute an appeal, or seek any revision of said decree, is untrue. On the contrary, your Trustee is advised and states that his Solicitor stated to Counsel for the bankrupt and his family, in the Chancery Court case, that he didn't care whether they appealed or not; that what he wanted was to get a decree entered, and that immediately. And that if there was any inducement on the part of the Solicitors for the petitioners in the Chancery Court case to sign this decree, that such inducement was, that your Trustee's Solicitors would eliminate any question of the liability of the Williamson County Banking & Trust Company and a reference to the Clerk and Master to ascertain the amount of the liability of said bank; and also, the fact that your Trustee's Solicitors stated that as far as they were concerned, they would not press the contempt proceedings pending against the bankrupt, and such other proceed-

ings as they contemplated taking against the bankrupt.

With regard to the statement in the petition with reference to the claim of the Broadway National Bank, your Trustee is advised and stated, that it is utterly false and untrue that any statement of any kind, character or description with regard to the claim of the Broadway National Bank was in any way a condition on the part of the Attorneys for Petitioners in the Chancery Court case, signing the decree. On the contrary, your Trustee would state that he is advised that the facts with regard to the claim of the Broadway National Bank filed in this proceeding, were as follows:

After the decree in the Chancery Court case had been signed by Judge Jos. C. Eggleston, the Solicitor for the petitioners, and defendants in that case, that Judge Eggleston, after some further talk among the Solicitors, turned to Mr. Jordan Stokes, Jr., who in addition to being Solicitor for your Trustee, was also Counsel for the Broadway National Bank, and stated in substance: "Old man Sedberry seems to feel that your bank is kind of gouging him in the amount of its claim; are you willing to do anything about it?" Mr. Stokes thereupon replied: "I have no authority to change the amount of this claim, and the officials of the Broadway Bank do not feel very kindly toward Mr. Sedberry, because of the many remarks that he has made with reference to the bank and his efforts to inject the bank into this case; but I will recommend to Mr. Potter, and Mr. Potter usually takes my advice, that the amount of the bank's claim be reduced to the actual amount of the bank's loss, including expenses, attorney's fees, and interest." Your Trustee is advised that his Solicitor, Mr. Stokes, upon returning home, communicated with the Broadway National Bank and had them to arrive at the amount of their claim, in accord with the above, which amount was Fifty-five Hundred ($5500.00) Dollars; and your Trustee is advised that Mr. Stokes telephoned to Mr. Handly and stated to him that the bank would reduce the amount of the bank's claim to that amount; namely, $5500.00. And this amount was agreed to by Mr. Handly, as Attorney for the Bankrupt.

II.

As to the allegation in Paragraph Two: That efforts were made looking to an agreement as to Attorney's fees for your Trustee's Solicitor, this is true. Efforts were made to this end, and the approximate value of the farm was sought to be arrived at in order to determine the amount of these fees under the contract entered into be-

tween your Trustee and Jordan Stokes, Jr., his Solicitor, which contract was approved by this Honorable Court.

Your Trustee is informed, believes and states, that a reasonable valuation of the entire assets that have already come into possession of your Trustee, and those that will come into his possession by virtue of the Final Decree of the Chancery Court at Franklin, consisting of a judgment for something over $11,000.00 and interest, against D. M. Ferry Company and the U. S. Fidelity & Guaranty Company; also, personal property and the farm, the title to which has been vested in your Trustee, that all of said assets are of approximately the value of $100,000, or possibly more.

Your Trustee would further state, that Mr. Jordan Stokes, Jr., his Solicitor, has insisted upon the carrying out of his contract with him and has made demand upon him for his compensation, namely, one-half of the entire estate secured or recovered by him and his Associates, as provided in said contract, a copy of which is attached to this Answer and made a part hereof as Exhibit "E."

Your Trustee is advised and states that his Solicitor did offer, in case this matter was settled immediately and without any further proceedings, to reduce the amount of his compensation to $40,000. However, your Trustee is advised and states, that all of said matters were in conference, looking to a compromise and final settlement of this matter and that it was distinctly understood and agreed that any proposition made by either side should not in any way constitute a waiver of the rights of any of the parties.

Your Trustee denies that the compensation provided by the contract entered into between your Trustee and the said Jordan Stokes, Jr., which contract will be more particularly hereinafter referred to, is exorbitant, but on the contrary, your Trustee would state that the compensation provided for under said contract is the usual and customary compensation in cases of this character, and that said compensation provided for under said contract is reasonable.

Your Trustee would further state and show to the Court that he employed the said Jordan Stokes, Jr., as his Solicitor, to conduct an investigation and examination of the bankrupt, and that there were no assets of the estate, and that the said Jordan Stokes, Jr., stated that he would personally assume all the stenographic charges for the taking down of the testimony of the bankrupt and the members of his family, upon their general examination in bankrupcty. That the exact percentage on a con-

tingent basis was not agreed upon at the beginning of the employment of the said Jordan Stokes, Jr., and the making of this investigation, and the conducting of this examination, but that it was generally understood between your Trustee and the said Jordan Stokes, Jr., that his employment would be upon a contingent basis, and that the contract of employment would be drawn up later on, to be submitted to the Court for approval. Your Trustee would further state that the said Jordan Stokes, Jr., did conduct the general examination of the bankrupt and the members of his family, and did assume the payment of stenographic charges, and devoted a large amount of time and attention in said examination and investigation leading up to the preparation and filing of the bill filed in your Trustee's name in the Chancery Court at Franklin, Tennessee, by virtue of which proceedings, all of the assets of this estate were secured.

Your Trustee would further state, that in said contract, at the special instance and demand of your Trustee, the said Jordan Stokes, Jr., personally obligated himself to, and did guarantee your Trustee against any and all damages and expenses growing out of his employment, contemplating such damages as might arise on account of the wrongful suing out of injunctions; such damages as might result on account of the wrongful appointment of Receivers, and other proceedings.

Your Trustee further states, that in case the said Jordan Stokes, Jr., should have been unsuccessful, that his liability on this account would have been considerable, inasmuch as the Receivers were in charge of this property for a matter of approximately two years before the case was determined. So that the personal liability of Mr. Stokes on account of said contract, in case he had have been unsuccessful, would have, in the opinion of your Trustee, amounted to from $10,000 to $15,000.00.

Your Trustee insists upon the carrying out of his contract with the said Jordan Stokes, Jr., which contract was entered into in good faith on both sides, and has been complied with by Mr. Stokes; and that Mr. Stokes be paid his expenses, and his compensation of one-half of the entire property secured and turned over, or the title to which has been vested in the Trustee, after deducting the amount of such expenses; all as provided in said contract between your Trustee and the said Jordan Stokes, Jr.

Your Trustee is advised and would further state, that after the Chancellor at Franklin, Tenn., had decided all questions in favor of your Trustee, and either vested

the title to all the property in your Trustee, or ordered the Receivers of the Chancery Court to turn said property over to your Trustee, and after a conference looking to a settlement of the question of your Trustee's Solicitor's fees, that Mr. K. T. McConnico, an Attorney at the Nashville, Tennessee, Bar, called upon Mr. Jordan Stokes, Jr., and his Associates, and stated that he felt that the contract entered into between your Trustee and the said Jordan Stokes, Jr., was causing embarrassment to the Solicitors for the petitioners, and that thereupon, in accord with the suggestion of Mr. McConnico, a stipulation was drafted, a copy of which is hereto attached and made a part of this Answer as Exhibit "B," looking to the relieving of this embarrassing situation, if such existed on the part of the Solicitors for petitioners. Your Trustee is, however, advised and states, that such stipulation or agreement has never been accepted by the petitioners, although the same was made on November 19, 1919, and has been in their possession continuously, up to the present time; and that instead of accepting said stipulation, said petitioners have filed a petition in this Court, making numerous untrue allegations, by which it is sought to show that the decree of the Chancellor at Franklin was a consent decree, settlement, or compromise, while such is not a fact, but said decree was the judgment of the Chancellor upon the merits, and not in any sense a compromise or consent decree.

The Chancellor at Franklin, Tennessee, as your Trustee is advised and states, sustained your Trustee's Bill filed in said Court, in all respects; and the Williamson County Banking & Trust Company were made a party defendant in said Chancery proceedings. Under the judgment, as pronounced by the Chancellor, your Trustee would have been entitled to a reference to ascertain the extent of the liability of the Williamson County Banking & Trust Company; but your Trustee is advised that his Solicitors waived this right so adjudged in your Trustee, as against the Williamson County Banking & Trust Company, and also agreed, so far as they were concerned, to refrain from proceeding with the contempt proceedings against the bankrupt, and such other proceedings as they might contemplate; and that in turn, the Sedberrys agreed not to seek a revision of said judgment of the Chancellor as embodied in said decree, by appeal or otherwise.

Your Trustee is advised and would further state that the stipulation, a copy of which has been made a part of this answer, as heretofore stated, was signed in dupli-

cate and delivered to Mr. K. T. McConnico on November 19, 1919, for immediate acceptance by the said Sedberrys, or their Solicitors, and that said stipulation has not been accepted although more than a reasonable length of time has been given to said petitioners to accept said stipulation. And your Trustee is advised and states, that said offer to stipulate and agree with regard to said contract of employment, has been withdrawn and was withdrawn on the 7th day of January, 1920, in accord with a copy of a letter written by your Trustee's Solicitor, Mr. Jordan Stokes, Jr., to Mr. K. T. McConnico, which is hereto attached and made a part of this Answer as Exhibit "C."

Your Trustee would further state, that his Solicitors have attempted in every way to be fair, and to if possible, settle the question of Attorney's fees without any litigation; but that the petitioners have shown no desire to cooperate to that end, but seek now to come into this Court and try to set up conditions attendant upon the signing of the decree in the Chancery Court, that are not true and do not exist.

Your Trustee does not want to be in the attitude of having the contract entered into by him with the said Jordan Stokes, Jr., repudiated, but he desires said contract, which, as heretofore stated, was approved by this Court, carried out, and the said Jordan Stokes, Jr., paid, for himself and Associates, in accord with the terms of said contract. Said contract was entered into in good faith and the said Jordan Stokes, Jr., has lived up to his part of said contract and your Trustee in turn, desires to live up to his part of said contract.

Your Trustee would further state, that it would have been difficult to have secured any Attorney who would have entered into a contract, such as the contract secured by your Trustee with the said Jordan Stokes, Jr., because under the terms of said contract, the said Jordan Stokes, Jr., assumed liabilities that in the nature of things would very probably have been considerable in case he had been unsuccessful in exposing the fraud of this bankrupt and recovering this property.

Your Trustee will file a complete statement or report showing the claims on file in this estate, and also, a statement showing all properties coming into his hands, including a statement of the approximate value of the farm located in Williamson County, Tennessee, the title to which has been vested in your Trustee; and also, the approximate amount that your Trustee may reasonably expect from the balance in the hands of the Receivers of the Chancery Court at Franklin, Tennessee, from the

property and funds in their hands and to come into their hands by virtue of the judgment obtained in their favor against the D. M. Ferry Company and the U. S. Fidelity & Guaranty Company for something over $11,000.00 and interest.

As to the allegation in the petition: That the petitioners have perfected arrangements whereby they can and will raise by mortgage, the sum necessary to be paid into this Court, in settlement of all the court costs, commissions, expenses, Attorneys' fees and claims your Trustee would state, as follows:

1st: This bankrupt, J. H. Sedberry, filed his voluntary petition, seeking to use the Bankrupt Court in furtherance of his fraudulent intent, to the end that he be relieved from debts, while in fact, the owner of a large and valuable amount of property.

2nd: The bankrupt scheduled no assets and has strenuously opposed your Trustee and his Solicitors in their efforts to secure the assets rightfully belonging to this estate.

3rd: Since the adjudication by the Chancellor at Franklin, Tennessee, on July 31st, 1919, in favor of your Trustee's contentions, and ordering all the property in the hands of the Receivers of that Court, turned over to your Trustee, and vesting the title to said farm in your Trustee, that the bankrupt and the petitioners have not shown any diligence; but, on the contrary, have now come into this Court with a petition making allegations that said Final Decree of July 31st., 1919, in the Chancery Court at Franklin, Tennessee, was conditioned upon certain things, which conditions, your Trustee is informed and states, are untrue and never existed. And your Trustee asks that he be instructed to proceed immediately with the sale of this farm and the collecting in of other assets of this estate adjudicated to belong to him, and wind said estate up.

Your Trustee further states, that especially should said farm be sold at the present time, for the reason that farm lands are high and your Trustee will very probably be able to realize from $70,000 to $75,000 from the sale of this farm at the present time, while if said matter is delayed, said farm may depreciate very materially in value.

Your Trustee hereto attaches and makes a part of this Answer as Exhibit "D," the affidavits of Jordan Stokes, Jr., Jos. R. West and R. H. Crockett.

Your Trustee, as further showing that the contract entered into between himself and Jordan Stokes, Jr., provides for fair and reasonable compensation to the said

Answer of Thos. G. Watkins, Trustee, to Petition

Jordan Stokes, Jr., attaches to this Answer and makes a part thereof as Exhibit "F," a transcript of the record in the Chancery Court at Franklin, Tennessee, and of this Court, together with the sworn statements of Jordan Stokes, Jr., Joseph R. West and R. H. Crockett. And your Trustee will file on or before the hearing of this matter, the sworn statements or depositions of Attorneys, giving their judgment as to the reasonableness of the compensation provided for in said contract, and as to what should be the compensation of Jordan Stokes, Jr., and his Associates for their services in this matter.

And now, having fully answered said petition, your Trustee asks the judgment of this Honorable Court thereon.

Thomas G. Watkins,
Trustee in Bankruptcy of
J. H. Sedberry,
Bankrupt.

State of Tennessee)
County of Davidson)

Thomas G. Watkins, Trustee, named in the foregoing Answer, makes oath that the statements contained in the foregoing Answer made as of his own knowledge are true, and those made on information and belief, he believes to be true; and the Answer as a whole is true, to the best of his knowledge, information and belief.

Thomas G. Watkins.

Subscribed and sworn to before me,
this 9th day of January, 1920.
Aline J. Swain,
Notary Public.
(SEAL)

Exhibit "B"

EXHIBIT "A."

Final Decree of the Chancery Court, Franklin, Tenn.

(See p. 62 of this transcript.)

EXHIBIT "B."

Stipulation with Regard to Attorney's fee, as follows:

"WHEREAS, there was a contract entered into on the 24th day of October, 1917, between Thomas G. Watkins, Trustee in Bankruptcy of the above named estate, and Jordan Stokes, Jr., providing for the employment and compensation of the said Jordan Stokes, Jr., as Attorney for the Trustee in this case, a copy of said contract of employment is hereto attached and made a part of this paper; and,

WHEREAS, some objection has been raised by the Solicitors for the bankrupt and the bankrupt's wife and children, on account of the amount of the compensation stipulated in the contract; and,

WHEREAS, in order that all matters in connection with the compensation of the said Jordan Stokes, Jr., and Jos. R. West and R. H. Crockett, Attorneys assisting him, may be fully settled and determined by the Court, without being hampered in any way;

NOW, THEREFORE, it is stipulated and agreed as follows:

The said Jordan Stokes, Jr., agrees not to insist upon the contract as determining the amount of his compensation. It is, however, distinctly understood and agreed by J. H. Sedberry, Z. C. Sedberry, Trustee, Z. C. Sedberry, J. Bernard Sedberry, W. H. Sedberry, Catherine Sedberry Overhall and Falley Overall, that the Court, in determining the amount of the compensation of the said Jordan Stokes, Jr., (whose compensation shall also include the compensation of Mr. Jos. R. West and Mr. R. H. Crockett, who assisted him), may consider said contract, which may be introduced in evidence, for all evidential purposes, and may consider all the facts and circumstances existing as of the time of entering into the contract, together with such other proof as may be introduced; and that said compensation shall be determined by the Court upon the basis of what would be rea-

sonable, proper and full compensation for the services of the said Jordan Stokes, Jr., and his Associates, under the conditions as they obtained at the time the said Jordan Stokes, Jr., accepted employment, in October, 1917, and in accord with the work done and the results obtained, in pursuance of such employment, as upon a quantum meruit.

This AGREEMENT executed in duplicate, this, the 19th day of November, 1919.

J. H. Sedberry,
Z. C. Sedberry, Trustee,
Z. C. Sedberry,
J. Bernard Sedberry,
W. H. Sedberry,
Catherine Sedberry Overall,
Falley Overall.
By _____
_____
_____

Solicitors."

(See page 14 this transcript, for copy of contract, called for herein.)

EXHIBIT "C"

Letter from Jordan Stokes, Jr., to K. T. McConnico, withdrawing stipulation, as follows:

"January 7, 1920.

Mr. K. T. McConnico,
Attorney-at-Law,
Nashville, Tenn.

Dear Sir:

On November 19, 1919, I signed and executed in duplicate, a stipulation in regard to my contract for compensation, in the matter of J. H. Sedberry, bankrupt.

Mr. Jos. R. West and myself understood from our conference with you on November 18, 1919, that if I would agree, as outlined by you in that conference, and afterwards embodied in the stipulation signed by me on November 19, 1919, that by so doing I would be complying with what you considered all that could be asked of me in this matter. I left both of these signed copies with

Exhibit "C"

you on November 19, 1919, and you stated that you would immediately forward them to Mr. Avery Handly, or Judge Eggleston, for their, or their client's approval, and when approved by them, my copy would be returned; you stating that you did not feel at liberty, nor desired to take the liberty of closing the matter, but that unless this stipulation was agreed to by them, you, as Attorney, would have nothing further to do with the matter.

Shortly after signing this stipulation in duplicate and delivering both copies to you, I called Mr. Handly and he advised me that the stipulation had been sent to the Sedberrys in Texas. I heard nothing further from the matter until the filing of the petition of J. H. Sedberry and family in the Bankrupt court. In the matter of J. H. Sedberry, Bankrupt, such petition being filed by the Sedberrys through their Counsel, Mr. Norman Farrell. In this petition no mention is made of this stipulation, but on the contrary, there are numerous allegations in the petition that are untrue.

The main purpose of myself and associates in signing this stipulation, at your suggestion, was to relieve any question of embarrassment on the part of Counsel for J. H. Sedberry and family, which you suggested existed.

I have tried to be entirely fair about this matter, and I know that you have; but in the light of the fact that the stipulation has never been accepted, my copy never returned to me, the stipulation utterly ignored in the petition filed by the Sedberrys, and the many allegations in the petition filed by them in the Bankrupt Court, that are untrue; and after a conference with Mr. Jos. R. West and Mr. R. H. Crockett, who are associated with me, the agreement or stipulation is respectfully withdrawn, and you will consider the question, so far as any stipulation is concerned, entirely at an end; and, of course, I will feel at perfect liberty to rely upon my contract, if I see fit.

Assuring you that I appreciate your position in this matter, but inasmuch as matters have taken the turn that they have, all question of the stipulation is withdrawn, as heretofore stated, and it is at an end.

With kindest regards, I am,

Yours very truly,

Jordan Stokes, Jr."

Dict. J. S. Jr./S.

Joint and Separate Answer of Stokes, West and Crockett

EXHIBIT "D."

Affidavit of Jordan Stokes, Jr., Jos. R. West, and R. H. Crockett.

(See p. 121 of this transcript.)

EXHIBIT "E."

Contract between Trustee in Bankruptcy and Jordan Stokes, Jr.

(See page 14 of this transcript.)

EXHIBIT "F."

ABRIDGEMENT of testimony, Chancery Court Case.

(See p. 55 of this transcript.)

JOINT AND SEPARATE ANSWER OF STOKES, WEST AND CROCKETT, TREATED AS PART OF THEIR ORIGINAL EXAMINATION IN THIS MATTER—Filed January 10, 1920.

THE JOINT AND SEPARATE ANSWERS OF JORDAN STOKES, JR., JOS. R. WEST AND R. H. CROCKETT, TO THE PETITION FILED IN THIS CAUSE BY THE BANKRUPT, J. H. SEDBERRY, AND Z. C. SEDBERRY, J. B. SEDBERRY, W. H. SEDBERRY, CATHERINE SEDBERRY OVERALL, AND FALLEY OVERALL SUCH PETITION BEING FILED ON DECEMBER 19, 1919.

Jordan Stokes, Jr., Jos. R. West, and R. H. Crockett,

Joint and Separate Answer of Stokes, West and Crockett

for joint and separate answer to so much and such parts of said petition as they are advised it is material for them to answer, answering say:

In this answer, for the sake of brevity, said Jordan Stokes, Jr., Jos. R. West and R. H. Crockett will be referred to hereinafter as Stokes and Associates.

As to the allegation in paragraph One of the petition, to the effect that J. H. Sedberry upon his Voluntary Petition was adjudged a bankrupt on August 24, 1917, and that such bankruptcy proceedings are now pending, and the estate is being administered in this Honorable Court, this allegation is true.

The further allegation in Paragraph One, reciting that the farm located in Williamson County, Tennessee, the fee simple title to which is now held by Thos. G. Watkins, as Trustee, was deeded by W. J. Zellner and wife to Z. C. Sedberry, Trustee, in January 1902; and the excerpt copied in said position from said deed from Zellner and wife to Mrs. Sedberry, Trustee, is correct. It is true that said Zellner deed was exhibited at and made a part of the general examination of the bankrupt, J. H. Sedberry, and Mrs. Z. C. Sedberry, his wife, in these proceedings, but said deed was produced and put in evidence by virtue of the efforts and through the examination conducted by Stokes and Associates, as Solicitors for the Trustee in Bankruptcy.

As to what was the opinion of Mr. Sedberry, or the advice given him by his Counsel with regard to any interest that he had under this deed, that should have been scheduled, the said Stokes and Associates know nothing, except the fact that he did not schedule anything, or any interest whatsoever in this property.

As to the allegation: That said Zellner deed was duly recorded in the Register's office of Williamson County on the 11th day of February, 1902, and that since that time and up to the time of the filing of the voluntary petition in bankruptcy by the bankrupt, and thereafter, that said farm or property was used and occupied by the petitioners pursuant to the purposes of said trust. For answer to this allegation, the said Stokes and Associates would state, that the purposes of the trust are not disclosed from the Zellner deed, nor does the petition filed herein by petitioners, on December 18, 1919, disclose the purposes. However, adopting the purposes as adjudicated by the Chancellor in the Chancery Court, at Franklin, Tennessee, in the case of THOMAS G. WATKINS, TRUSTEE, vs. J. H. SEDBERRY, ET AL., as the true purposes; namely, For the purpose of defrauding the ex-

Joint and Separate Answer of Stokes, West and Crockett

isting and subsequent creditors of the said J. H. Sedberry, as the purposes contemplated by petitioners in the recitation in their petition, and if these are the purposes they would have the Court understand to be the purposes, then this allegation is admitted to be true.

It is true, that subsequent to the examination in bankruptcy of the bankrupt, his wife, and son W. H. Sedberry, and after the election of Thos G. Watkins, as Trustee, that the said Stokes and Associates, as Solicitors for the said Thos. G. Watkins, Trustee, filed on October 24, 1917, an Original Bill in the Chancery Court at Franklin, Tennessee, attacking said deed as fraudulent and void, and seeking an adjudication that said property was the property of J. H. Sedberry and should be turned over to his Trustee in Bankruptcy. It is true that Receivers were appointed in said Chancery cause at Franklin, Tennessee, and that from and after their appointment on October 24, 1917, they had charge of said farm.

It is true, that one of the purposes of the suit at Franklin, was to have the Court adjudge and decree that the farm in question and the property thereon was the property of the bankrupt, J. H. Sedberry, and rightfully belonged to his Trustee in Bankruptcy; and that said Zellner deed under which Z. C. Sedberry, Trustee, was seeking to hold said property, was fraudulent and void.

It is true that the Chancellor announced that the bankrupt was guilty of actual fraudulent intent at the time he procured the conveyance to be made on January 1, 1902, and his conclusions and findings are set forth in a decree entered in that cause, a copy of which decree is attached to and made a part of the Answer of Thos. G. Watkins, Trustee, to the petition filed in this cause by Sedberry and others, as Exhibit "A."

Said Stokes and Associates deny that they met with petitioners' Counsel for the purpose of drafting a decree, but would state that the Chancellor at Franklin, having found all matters in favor of the Trustee in Bankruptcy's contention, as set forth in his Bill, and having ordered a decree drawn accordingly, that Jordan Stokes, Jr., and Jos. R. West drafted a decree, in the office of Jordan Stokes, Jr., in Nashville, Tennessee, and went to Franklin, Tennessee, and in company with R. H. Crockett, submitted the same, as is usual and customary, to Mr. Avery Handly and Judge Jos. C. Eggleston, the then Solicitors for the petitioners and other defendants in the Chancery Court case at Franklin, Tennessee. Said Handly and Eggleston raised objection to certain provisions in the decree with reference to the adjudication as against the Williamson County Banking & Trust Com-

pany, and the Order of Reference with regard to the liability of the bank.

Said Stokes and Associates would further state, that the question of the petitioners' Solicitors being finally firmly convinced that the bankrupt had a vested interest of possibly one-fifth in the farm in question is utterly immaterial as the Chancellor had already decided in unequivocal terms, that the entire estate was, and had been from its inception, the estate of J. H. Sedberry, the bankrupt, and that the title thereto passed to his Trustee in bankruptcy by operation of law; and the Court had ordered the entrance of a decree in conformity with this holding.

It is true that there has been a large personal estate created from the products of this farm, due to the efforts of the Receivers appointed under the bill filed by the said Stokes and Associates, as Solicitors for the Trustee in Bankruptcy.

The petition makes the following allegation:

> "On consideration all the petitioners and particularly petitioners, Z. C. Sedberry, W. H. Sedberry, J. B. Sedberry and Catherine Sedberry Overall (inasmuch as their husband and father owed the debts scheduled), were willing to enter into an agreement for themselves and the bankrupt with solicitors for the Trustee, to forego their right of appeal and allow title to the land to be decreed to the Trustee, upon condition that the true amount of the bankrupt's debts be arrived at and the costs and expenses of the bankruptcy proceedings, including an attorney's fee to the solicitors for the Trustee, to be fixed by the Court of Bankruptcy; and upon the further condition that the funds in the hands of the said Chancery Court receivers should be turned over to the Trustee, to be distributed by order of the Court of Bankruptcy as a partial dividend to the creditors whose claims had been duly filed and allowed; and upon the further condition that, when the amount necessary to pay off the remainder of the claims and after the dividend aforesaid, together with costs of the administration, had been ascertained, the Trustee would join with petitioners in a mortgage on said property to raise the necessary sum in order that the bankruptcy case might be finally settled and wound up."

If, by this allegation, the petitioners mean to state that Stokes and Associates, in the Chancery Court case, participated in and agreed to said statements and conditions just hereinbefore set out, such statements in the petition are utterly false and untrue. Said Stokes and Associates would state to the Court, that the facts attendant upon the signing and entry of this decree, and the conferences leading up to same, were as follows:

That, as heretofore stated, after the Chancellor had delivered his opinion and judgment sustaining the Bill filed by them as Solicitors for Thos. G. Watkins, Trustee, against J. H. Sedberry, and others, that Jordan Stokes, Jr., and Jos. R. West prepared a decree, in Nashville, Tennessee, carrying into effect, the judgment of the Chancellor; and that said Stokes and West then went to Franklin, Tennessee, and in company with R. H. Crockett, submitted said decree as drafted by them, to Handley and Eggleston, Counsel for the defendants in the Chancery Court case. That this is usual and customary; and that at this conference, objections were raised by the said Handley and Eggleston, to said decree, such objections having reference to the adjudication as provided in the decree as against the Williamson County Banking & Trust Company, and the Order of Reference with regard to the liability of the Williamson County Banking & Trust Company, as embodied in said decree as originally drawn, in Nashville, Tennessee.

Said Stokes and Associates further state, that there was no agreement whatsoever, that if the Sedberrys would forego their right of appeal and allow the title of the farm to be decreed to the Trustee, upon the conditions hereinbefore set out, or, upon the condition that the true amount of the bankrupt's debts be arrived at and the costs and expenses of the bankruptcy proceedings, including an Attorney's fee for the Trustee, to be fixed by the Court of Bankruptcy, or that the funds in the hands of the Chancery Court Receivers should be turned over to the estate to be distributed by order of the Court of Bankruptcy as a partial dividend to the creditors whose claims had been duly filed and allowed, or that the amount necessary to pay off the remainder of the claims, and after the dividend aforesaid, together with costs of administration had been ascertained, that the Trustee in Bankruptcy would join with the petitioners (the Sedberrys) in a mortgage upon said property to raise the necessary sum in order that the bankruptcy case might be finally settled and wound up. It is untrue that the said Stokes and Associates, or any one of them, ever at

any time agreed that said farm would not be sold by decree of the Court.

Referring to the first conference had upon the decree as drafted in Mr. Stokes' office in Nashville, Tenn., and the objections raised thereto by Judge Eggleston, with regard to the liability of the Williamson County Banking & Trust Company: Such objection was particularly on account of a mortgage of $2,000, that had been taken by said Williamson County Banking & Trust Company on the growing crop on the farm in question, such mortgage being taken a few days after the voluntary petition in bankruptcy of the bankrupt had been filed.

Objection was also made to another provision in the decree as originally drafted, it being provided in said decree as first drawn, that the farm located in Williamson County should be sold by the Receivers in the Chancery Court case, and the proceeds of such sale turned over to Thos. G. Watkins, Trustee in Bankruptcy. Mr. Handley stated that he did not see any reason for having a sale of it by the Receivers in the Chancery Court case at Franklin, and paying them commissions for the sale of this farm, and then in turn having to pay commissions to the Trustee in Bankruptcy, and suggested that instead of this, that in carrying out the judgment of the Court in the decree, that said decree divest the title to this farm out of the Sedberrys and vest the absolute title in Thos. G. Watkins, Trustee in Bankruptcy of this estate.

In this conference, Jordan Stokes, Jr., stated, that he didn't care whether the Sedberrys appealed the case, or whether they didn't; that what he desired, was to get a decree entered, embodying the judgment of the Court, and that immediately, so that the case, if appealed, would be tried at the December, 1919, Term of the Supreme Court of Tennessee.

Said Stokes and Associates further state, that in said first conference, after some discussion, that they stated that they would eliminate the Order of Reference with regard to the liability of the Williamson County Banking & Trust Company, and also, that they would eliminate the sale of this property by the Receivers in the Chancery Court at Franklin, Tennessee, and in lieu thereof, would divest title out of the Sedberrys and vest title in the Trustee in Bankruptcy. And that so far as the said Stokes and Associates were concerned, that they would not further press or insist upon the contempt proceedings against the bankrupt, or proceedings of a criminal nature, which they might contemplate taking. The above and foregoing statement was made after Judge

Eggleston had stated that he wanted to see if he couldn't get the matter settled without the case being appealed; and that if the said Stokes and Associates would agree, as above outlined, that in turn, Judge Eggleston and Mr. Handly would agree that such a decree should be final and that no revision thereof would be sought by appeal or otherwise.

Said Stokes and Associates would further state, that Jordan Stokes, Jr., and Jos. R. West, returned to Nashville, Tennessee, and drafted a decree in the said Stokes' office, identical with the original decree as drafted by them, except that the Order of Reference as to the Williamson County Banking & Trust Company, and the adjudication of the said Bank's liability was eliminated, and said Bill dismissed as to said Bank; and instead of ordering the Chancery Court Receivers to sell said farm and turn over the proceeds of such sale to Thos. G. Watkins, Trustee in Bankruptcy, that the title to said farm was divested out of the Sedberrys and vested absolutely in the Trustee in Bankruptcy, subject alone to a small mortgage indebtedness of $2,500.00, and interest. That after re-drafting said decree in conformity with the first conference, as above set out, that the said Stokes and West in a day or two afterwards, returned to Franklin, Tennessee, and in company with R. H. Crockett, submitted this decree to Judge Eggleston and Mr. Handly; and this decree as drafted in the office of Jordan Stokes, Jr., was finally entered upon the Minutes of the Chancery Court at Franklin, Tennessee, as the decree of the Court, and that there was no agreement or condition whatsoever, except as herein stated, with regard to said decree.

At this second conference, after going over the decree, Judge Eggleston stated, that while he had authority to sign the decree as drafted, that nevertheless, he desired to see Sedberry about it. Thereupon Stokes and Associates left the office of Judge Eggleston in Franklin, Tennessee, and went to the office of R. H. Crockett in Franklin, Tenn.; and in about a half or three-quarters of an hour, Mr. W. J. Smith, a young lawyer in Judge Eggleston's office, came to the office of R. H. Crockett and requested Stokes and Associates to come to the office of Judge Eggleston, which they did. Thereupon, Judge Eggleston stated that he had seen Sedberry and the decree was all right; and he accordingly signed this decree. However, **said decree was in no sense a consent decree,** except with reference to its finality, all of the provisions of the decree being the judgment of the Court, as pronounced by the Court, except that the said Stokes and As-

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sociates waived any rights that the Trustee might have against the Williamson County Banking & Trust Company.

For further answer to this petition, Stokes and Associates would state, that in said second conference, **after the decree had been signed,** that Judge Eggleston stated that maybe, or possibly, that Sedberry could raise the money to pay himself out of bankruptcy, and requested Stokes and Associates to wait for thirty (30) days in which to see what he could do. In the course of the discussion, it having been developed that Judge Eggleston had a very sick daughter and that he would have to accompany her to Denver on account of her health, Jordan Stokes, Jr., stated that he would have the Trustee in Bankruptcy refrain from advertising this farm for sixty (60) days instead of thirty (30) days, as requested by Judge Eggleston, in order that ample time might be given.

In this second conference, Judge Eggleston asked Jordan Stokes, Jr., that in case Sedberry could raise the money, what would be the Attorney's fee for the Trustee in Bankruptcy, and Jordan Stokes, Jr., replied, that he would not discuss the matter with him, that that was a matter exclusively within the jurisdiction of the Bankrupt Court.

After the signing of the decree, and in this second conference, Judge Eggleston stated to Jordan Stokes, Jr., he in addition to being Counsel for the Trustee in Bankruptcy was also Counsel for the Broadway National Bank of Nashville, Tennessee, in substance, as follows:

> "Old man Sedberry seems to feel or think that your Bank is kind of gouging him in the amount of their claim; are you willing to do anything about that"; or words to that effect.

Jordan Stokes, Jr., thereupon stated that he was willing to recommend to Mr. A. E. Potter, President of the Bank, to make the amount of the bank's claim, the actual loss sustained by the Bank, together with interest, expenses and Attorney's fees, and not to stand upon their legal rights to prove the claim as proven; but that the Bank did not feel very kindly toward Mr. Sedberry on account of the numerous remarks that Mr. Sedberry had made, despite the fact that the bank had been very lenient with him and had granted him time and had worried with him, but could get no satisfaction for their debt. And the said Jordan Stokes, Jr., further stated,

that Mr. Potter usually took his advice, and that he felt that the matter could be settled in this way, but that he would not bind the bank to any settlement until he saw Mr. Potter.

Jordan Stokes, Jr., for separate answer, states that immediately upon his return to Nashville, Tennessee, he communicated with Mr. A. E. Potter, President of the Broadway National Bank, and acquainted him with what he had stated to Judge Eggleston, and requested that the amount of the Bank's claim be figured in accord therewith, which was done, with the understanding that said claim was to be settled immediately, or within sixty (60) days; and the amount of the claim so arrived at was approximately $5,500.00. The said Jordan Stokes, Jr., immediately telephoned to Mr. Handly and told him that the Bank's claim would be reduced to $5,500.00, which was satisfactory with Mr. Handly.

Jordan Stokes, Jr., and Jos. R. West, further state that upon their return to Nashville, Tennessee, after the signing of the final decree, and such final decree so signed had been left with R. H. Crockett to be entered upon the Minutes of the Chancery Court at Franklin, Tennessee, that they immediately acquainted Mr. Thos. G. Watkins, Trustee in Bankruptcy of J. H. Sedberry, with what had transpired, stating to the said Watkins, Trustee, that he (the Trustee), was to refrain from advertising this farm for a period of sixty (60) days; and that they would not press the contempt proceedings against the bankrupt, or other proceedings of a criminal nature, so far as they were concerned; and waiving the Trustee's rights against the Williamson County Banking & Trust Company, and that there was no other agreement whatsoever.

All of these conditions have been fully and completely complied with by the said Stokes and Associates, and Thos. G. Watkins, Trustee in Bankruptcy of this estate.

II.

As to the allegation contained in Paragraph Two, that efforts were made looking to an agreement as to Attorney's fees for the Trustee's Solicitors, such efforts were made in conference between Stokes and Associates, and Handly and Eggleston; and in these conferences, the approximate value of the farm was sought to be arrived at in order to determine the amount of these fees, under the contract entered into between the Trustee in Bankruptcy and Jordan Stokes, Jr., which contract was ap-

proved by the Honorable Lee Brock, Referee in Bankruptcy, and a copy of such contract is made Exhibit "E" to the Answer to Thos. G. Watkins, Trustee in Bankruptcy, to the petition filed on December 18, 1919, by the Sedberrys, and will be more particularly referred to hereinafter.

Said Stokes and Associates would further state, that it was distinctly understood and agreed in these conferences with the said Handly and Eggleston looking to an agreement as to Attorney's fees, that no parties should thereby waive any rights whatsoever they had, but that said conferences were solely and alone for the purpose of seeing if the parties could not get together.

Stokes and Associates would further state, that a reasonable valuation of the entire assets—those that have already come into the possession of the Trustee in Bankruptcy, and those that will come into his possession by virtue of the Final Decree in the Chancery Court at Franklin, Tennessee, consisting of a judgment for something over $11,000, and interest, against D. M. Ferry Company and the United States Fidelity & Guaranty Company; and also, the personal property and the farm, title to which has been vested in the Trustee, that all of said assets are of approximately the value of $100,000 or possibly more.

Jordan Stokes, Jr., for separate answer to said petition, would further state that he, as he was authorized to do under said contract, had associated with him, Jos. R. West and R. H. Crockett, as his Associates; and that the said Jordan Stokes, Jr., and Associates, insist that the contract entered into between the said Jordan Stokes, Jr., and the Trustee in Bankruptcy, be carried out, and that the compensation coming to the said Jordan Stokes, Jr., and through him to Jos. R. West and R. H. Crockett, who were associated with him, be paid; and that the amount to be paid under the terms of said contract, namely, one-half of the entire estate secured or recovered by the said Stokes and Associates, as provided in said contract, be paid to the said Jordan Stokes, Jr.; or, that this Court proceed to sell said farm and collect in and reduce to cash, all of the assets remaining in the hands of the Receivers at Franklin, Tennessee, and collect in the judgment of something over $11,000 against D. M. Ferry Company and the U. S. Fidelity & Guaranty Company, and to wind up the estate in accord with the Bankruptcy Law and procedure.

Stokes and Associates would further state, that in the conferences they had with Handly and Eggleston with

regard to agreeing upon the amount of Attorney's fees for the Trustee in Bankruptcy, that such conferences were held some time after the signing and entry of the Final Decree in the Chancery Court case at Franklin, Tennessee, a copy of which decree is made Exhibit "A" to the Answer of Thos. G. Watkins, Trustee, filed herein, and that in such conferences, the value of the farm, personal estate, moneys, judgment against D. M. Ferry Company and the U. S. Fidelity & Guaranty Company, were considered; and that after deducting the expenses and costs, that all of said property, upon a reasonable valuation, it was ascertained would net the Trustee in Bankruptcy approximately $98,000. And it is true, that in these conferences, the said Jordan Stokes, Jr. relied upon his contract, stating that he would be entitled to one-half of this net amount, or $49,000 as compensation for himself and Associates.

It is true, that the said Handly and Eggleston tentatively offered $10,000 as Attorney's fees, which offer was refused by the said Jordan Stokes, Jr., and thereupon, Judge Eggleston stated that he was very anxious to settle this matter and asked that Stokes and Associates see if they could not agree to make a better offer than provided by the terms of the contract between Stokes and the Trustee in Bankruptcy. Stokes and Associates, after conferring, offered to settle the question of Attorney's fees at $40,000; however, such offer was made in an effort to settle the matter without any further litigation. No further propositions were made, and thus the matter ended.

Stokes and Associates would further state, that some time the first part of November, 1919, Mr. K. T. McConnico, an Attorney of the Nashville Bar, stated to Mr. Jos. R. West, that he had been approached with regard to the question of the compensation provided for in the contract between Jordan Stokes, Jr. and Thos. G. Watkins, Trustee in Bankruptcy in this cause, and Jos. R. West advised the said Jordan Stokes, Jr. of the statements made by Mr. McConnico. Jordan Stokes, Jr., thereupon called Mr. Avery Handly on the telephone, who stated that Mr. McConnico had been consulted with regard to the matter, but that Mr. McConnico was out of the city at that time.

Upon the return of Mr. McConnico to the city, and on November 18, 1919, Jos. R. West, in the presence of Jordan Stokes, Jr., called Mr. McConnico, from the office of Jordan Stokes, Jr., and stated that he and the said

Stokes desired to see him with reference to the Sedberry matter, to see if matters could not be expedited, and made an engagement with Mr. McConnico for the afternoon of November 18, 1919; and the said Stokes and West went to the office of Mr. McConnico on the afternoon of November 18, 1919, and in this conference, Mr. McConnico stated that he had been consulted with regard to this matter and that he felt that the contract entered into between the Trustee and said Stokes, was causing some embarrassment to the Attorneys for the Sedberrys with their client; and that if the said Stokes would agree to one of two propositions, that he thought the matter could be adjusted so as to relieve the embarrassment of the Solicitors, and that the matter could thus be terminated.

The first proposition submitted by Mr. McConnico was, that a decree be entered in the Chancery Court case at Franklin, Tennessee, nullifying the last clause of the Final Decree; namely: the clause providing that the decree should be final and no parties should seek a revision thereof by appeal or otherwise.

To this proposition, Mr. Stokes stated, he did not think he would entertain that at all.

Mr. McConnico then stated, that he thought that if a stipulation could be agreed upon—that the said Stokes would not rely upon the letter of his contract, but would introduce his contract in evidence for all evidential purposes, and generally get the benefit of all the facts and circumstances surrounding the case at the time of the employment, all as embodied in the copy of the stipulation made Exhibit "B" to the Answer of Thos. G. Watkins, Trustee—that if such a stipulation was entered into, that he believed it would relieve the embarrassing position of Handly and Eggleston with their client, and that the fee of the said Stokes, for himself and Associates, would be agreed to and the matter speedily terminated.

In this conference, Jordan Stokes, Jr., stated to Mr. McConnico, that he would have a conference with Jos. R. West and R. H. Crockett, and let him know immediately.

Stokes and Associates would further state, that all three of them met on November 19, 1919—and R. H. Crockett was acquainted with what had transpired in the conference of the day before, with Mr. McConnico—and after discussion, the stipulation made Exhibit "B" to the testimony of Thos. G. Watkins, Trustee, was drafted. And on the afternoon of November 19, 1919, Jordan Stokes, Jr., Jos. R. West and R. H. Crockett went to the office of Mr. McConnico and submitted this stipulation.

Mr. McConnico stated that he thought that this stipulation was all that anyone could ask. *He, however, stated that he had no authority to execute this stipulation, and did not desire to assume the authority, but that he would sign the stipulation and send it to either Mr. Handly or Judge Eggleston,* so that the matter might be approved by the Sedberrys. And to that end, both copies of the stipulation were left with Mr. McConnico for the immediate acceptance of the Sedberrys.

A few days after this stipulation was left with Mr. McConnico, Jordan Stokes, Jr., telephoned Mr. Handly, who advised him that the stipulation had been sent to Judge Eggleston and by him sent to the Sedberrys who were somewhere in Texas.

Stokes and Associates would further state that they, nor any of them, ever received any notice that this stipulation was agreeable with the petitioners, or their Counsel, and that said stipulation was never agreed to and accepted by the said Sedberrys or their Counsel; and that although it was a part of the understanding in the conference with Mr. McConnico on November 19, 1919, that one copy of this stipulation should be returned to Jordan Stokes, Jr., that this copy was not returned to him, but that on the contrary, petitioners, through their Counsel, Mr. Norman Farrell, filed their petition in this cause, utterly ignoring the contract they knew to be in existence, between the said Stokes and the Trustee in Bankruptcy of this estate; and also, utterly ignoring any question of the stipulation. And in addition, in said petition, making numerous and sundry untrue allegations which have hereinbefore been more particularly referred to.

Said Stokes and Associates would further state that they held a conference with reference to this matter, and felt that they had been fair in every respect, and that on account of all the foregoing, and this stipulation never having been accepted, and the understanding in Mr. McConnico's office never having been complied with, and the petition being filed making these untrue allegations, that the general impression and understanding that the question of Attorney's fees would be speedily agreed upon and terminated as a result of stipulating was demonstrated to be impossible of performance, and that they in said conference decided that all question of said stipulation should be withdrawn, that accordingly, said Jordan Stokes, Jr., withdrew said stipulation, and wrote a letter on January 7, 1920, which was on that date delivered to Mr. K. T. McConnico, the party with whom the conference had been held, said letter being made Exhibit "C" to the

Answer of Thos G. Watkins; and in said letter, said stipulation is withdrawn, and all question with regard to said stipulations is at an end. And said stipulation, at the time of writing said letter, had not been accepted by the petitioners and no notice of any kind, character or description, with reference to said stipulation, had been given to the said Jordan Stokes, Jr., or Associates, and the copy of said stipulation, as it was understood would be returned to the said Jordan Stokes, Jr., had not been returned to him, and he had never seen either copy of said stipulation since delivering the same to K. T. McConnico, until after the Answer of the Trustee in Bankruptcy had been filed, to the petition of the Sedberrys filed herein, and after said petition and answer had been read, on January 12, 1920, and after said hearing had been adjourned until Wednesday, January 14th, 1920, when, on the afternoon of January 14th, 1920, Mr. Avery Handly brought one of the copies of said stipulation into the Referee in Bankruptcy's office and left the same there. This was about 2 o'clock in the afternoon of January 14, 1920, and said copy was not accepted by the said Jordan Stokes, Jr., and the said Jordan Stokes, Jr., and Associates decline to make any agreement whatsoever with regard to stipulating with reference to the contract between the said Stokes and the Trustee in Bankruptcy of this estate. But the said Stokes and Associates insist upon the contract entered into between the said Jordan Stokes, Jr., and the Trustee of this estate, and insist that the same be carried out.

Stokes and Associates would further state, that as to the allegation in the petition—that the petitioners have perfected arrangements whereby they can and will raise by mortgage upon the farm, and asking that the Trustee join in the mortgage upon the farm, the title to which is held by him, and by this sum so raised, settle all costs and expenses in bankruptcy and all the claims in full and a reasonable Attorney's fee—they make the following statement:

This bankrupt, J. H. Sedberry, filed his voluntary petition in bankruptcy, and in his schedules sworn to by him, he states that he has no assets other than two small pieces of real estate which were encumbered to their full value, and which, when sold after bankruptcy, did not leave any surplus to come into the hands of the Trustee in Bankruptcy; and that the intent of the bankrupt, J. H. Sedberry, was to use the Bankrupt Court as a means, instrument, or tool, in furtherance of his fraudulent intent and purpose to defeat his just creditors in the collection of

their debts, while at the same time, he was the real owner of large and valuable properties. That this bankrupt and his family strenuously opposed the said Stokes and Associates in their efforts to secure the assets that rightfully belonged to this estate. That since the adjudication by the Chancellor at Franklin, Tennessee, and the entry of the decree embodying his judgment on July 31st, 1919, in favor of the Trustee's contention and ordering all property in the hands of the Receivers of that Court turned over to the Trustee in Bankruptcy, and vesting the title to said farm in the Trustee in Bankruptcy, that the bankrupt and the petitioners have not shown any diligence, but on the contrary, have now come into this Court with a petition, making allegations that said Final Decree of July 31, 1919, in the Chancery Court at Franklin, Tennessee, was conditioned upon certain things, which conditions are untrue and never existed. And the said Stokes and Associates insist that the bankrupt, J. H. Sedberry, has no standing in Court, and that the winding up and settlement of this estate should not be delayed on said petition, but that the Trustee should proceed with a sale of the farm and the collecting in of all the assets of this estate and proceed to wind the same up under the provisions of the bankruptcy law, and carry out the terms of the Trustee's contract with the said Jordan Stokes, Jr., and pay to him the sum therein specified; namely one-half of the net amount of the entire estate coming to the Trustee, less the expenses of the said Jordan Stokes, Jr.

Said Stokes and Associates would further state that unless this is done, that said petition will probably be heard by this Honorable Court and will doubtless be then taken for review, to the Honorable Edward T. Sanford, District Judge, and doubtless from there, to the Circuit Court of Appeals at Cincinnati, and possibly to the Supreme Court of the United States; and that during this interim, the farm which can now be sold for approximately $75,000, farm lands at the present being very high, will probably depreciate in value materially.

And the said Stokes and Associates would further state that it is manifestly unfair to the creditors of this estate that they be unduly delayed in the payment of the amounts of their respective claims, together with interest up to the date of payment, while the matters and things set up in the petition are being litigated, and that said creditors are now, and have been for some time, entitled to have all of said property reduced to cash and their claims paid; and to that end, said assets should be reduced to cash so that the creditors of this bankrupt will not be

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forced to wait longer for payment of their claims, they already having been forced to wait for a considerable length of time, but that said claims, together with interest, should be paid immediately.

In order that all matters may be brought clearly to the attention of the Court, and the said Stokes and Associates having answered all of the allegations in the petition, they would now state and show unto the Court generally, a review of the facts and circumstances leading up to the making of the contract between the Trustee and Jordan Stokes, Jr., the approval thereof by the Referee, and all questions with reference to said contract subsequent thereto, and up to the present time, together with a brief statement of the services performed by the said Stokes and Associates, the nature and character of the litigation undertaken and conducted by them, the successful result thereof, and generally, the facts and circumstances connected with said employment and litigation and the services rendered.

Stokes and Associates would state and show to the Court that on August 24, 1917, J. H. Sedberry filed a voluntary petition in bankruptcy. In said petition, the said Sedberry scheduled unsecured creditors having claims amounting in the aggregate to $18,260.53, and secured creditors having claims amounting in the aggregate to $6,200.00. In the schedules in bankruptcy of the said J. H. Sedberry, he scheduled two pieces of real estate: one located near Thompson Station, Tennessee, and the other being a one-fourth undivided interest in a tract of land in Cannon County, Tennessee, title to which was held by J. H. Sedberry under unregistered deed. However, these two pieces of real estate were encumbered for as much as if not more than their value, and upon the subsequent sale thereof did not bring sufficient to net any surplus whatsoever to this estate. In said schedules, certain personal property is scheduled, as follows:

> Household and kitchen furniture in the home of Mrs. Z. C. Sedberry, Trustee, at Thompson Station, Tennessee (personal property), being exempt, under Section 3794 of Shannon's Code of Tennessee (1896 Ed.).

It will thus be seen, that in effect, the bankrupt, J. H. Sedberry, scheduled no assets. This was the condition of the estate at the time the petition in bankruptcy was filed.

Thos. G. Watkins, an Attorney of the Nashville Bar,

was selected as Trustee in Bankruptcy, at a meeting of the creditors of this estate, and was duly appointed, and the said Thos. G. Watkins qualified and entered upon the execution of his duties as Trustee. Said Thos. G. Watkins, Trustee in Bankruptcy of this estate, took up with Jordan Stokes, Jr., the question of investigating to see if there were any assets of the bankrupt that could be located and secured for this estate; and pursuant to an understanding between the said Jordan Stokes, Jr., and the Trustee in Bankruptcy, the said Jordan Stokes, Jr., accepted employment, realizing that his compensation would of necessity be upon a contingent basis.

Realizing the magnitude of the work and the large amount of investigation that would be necessary in order to secure the assets rightfully belonging to this bankrupt, the said Jordan Stokes, Jr., associated Mr. Jos. R. West, an Attorney of the Nashville Bar, to assist him in making the investigations, and also, in prosecuting any suits that might result from such investigations if it was deemed advisable to institute the same.

Thereupon, the said Jordan Stokes, Jr. and Jos. R. West proceeded to make investigations both as to the law and the facts with reference to securing for this estate, the farm located in Williamson County, Tennessee, the record title to which was in Z. C. Sedberry, Trustee. And also, to securing all the personal property and effects located thereon. Said Stokes and West went to Franklin, Tennessee, and investigated the records, and also had interviews with a number of persons; and later on, the said Stokes and West, in company with Mr. Thomas G. Watkins, Trustee in Bankruptcy, went again to Franklin, Tennessee, and investigated certain records, and particularly, the checks and bank account and other papers of the bankrupt and Mrs. Z. C. Sedberry, Trustee, in the hands of the Williamson County Banking & Trust Company, said Stokes and West and the Trustee, themselves, making copies of the entire bank account of Z. C. Sedberry, Trustee, and also, making copies of a large number of checks and other papers on file with said Bank.

Subsequent thereto, the said Stokes and West went, on a number of occasions, to Franklin, Tennessee, making investigations of the records in the Register's Office, such investigations extending from 1890 down to the time of the filing of the Bill in the Chancery Court at Franklin, Tennessee, on October 24, 1917. Also, investigating the records of the County Court Clerk, particularly with regard to a settlement made by J. H. Sedberry, who was administrator of his father's estate. Also, making investi-

gations of the records of the Clerk and Master's office of the Chancery Court at Franklin, Tennessee, and the Circuit Court Clerk's office at Franklin, Tennessee, from 1890 down to the date of the filing of the Bill on October 24, 1917. All of said records were searched from 1890, or prior thereto, down to the date of the filing of the Bill in the name of the Trustee, in the Chancery Court at Franklin, Tennessee, under which Bill, the property of this estate was finally secured.

It was necessary to make said investigation in order that the intention of this bankrupt, on January 1, 1902, the date of the deed to the property in question, might be shown; and from the investigation of these records it developed that the bankrupt had, on quite a number of occasions, mortgaged personal property located upon this farm, in his own name, and without Z. C. Sedberry, either as Trustee or individually, or any one else, joining him in the making of said mortgages.

Valuable information was also secured from the County Court Clerk's office with reference to a settlement the said bankrupt had made of his father's estate. These investigations of the records of the Chancery Court and the Circuit Court were necessary to be made, but no valuable evidence was secured from such investigation. The purposes of such investigations being, to ascertain if there were any judgments or suits pending against the said bankrupt at, or prior to the time, or subsequent to the time he procured the Zellner deed to be made on January 1, 1902.

A large number of people—relatives, neighbors and friends of the bankrupt—were interviewed by the said Stokes and West, to ascertain any statements that the bankrupt may have made in and about the time of the execution of the Zellner deed, on January 1st, 1902, and as to the general financial condition of the bankrupt at that time, as to whether he owed any debts, and if so, the nature and character of such debts and how they arose. As a result of such investigation, both of the facts and of the law, the said Stokes and West were of the opinion, that it was advisable to have a general examination of the bankrupt and his family, under the provisions of the Bankruptcy Law. They so advised the Trustee in Bankruptcy, and also, the Referee in Bankruptcy. And the said Jordan Stokes, Jr., stated, that there being no assets of this estate and no source from which any money could be secured with which to pay stenographic fees, that he was willing, personally, to assume the payment of stenographic fees for a court reporter to take the testimony

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of the bankrupt and the members of his family upon their general examination; and also, to pay the U. S. Marshal's costs for summoning the bankrupt and the members of his family.

In accord with this understanding, and the assumption of liability on the part of Jordan Stokes, Jr., the bankrupt, his wife, and one son, W. H. Sedberry, the other members of his family not being found in this district, were summoned before the Honorable Lee Brock, Referee, for general examination. The said Stokes and West were both present at the examination of the bankrupt and his wife and son, W. H. Sedberry, said Stokes conducting said examination with the assistance and suggestions of the said West. A copy of said examination has heretofore been made a part of the record in this cause as Exhibit "F" to the Answer of Thos. G. Watkins, Trustee in Bankruptcy.

After said general examination in bankruptcy, the said Stokes and West continued their investigation, both as to the law and facts with reference to said deed, and were of opinion that they could have said deed declared void, and that the real title to said farm, and all of the personal property and products therefrom were the property of J. H. Sedberry, and had been from the date of said Zellner deed, and that upon his adjudication in bankruptcy, the title to the same passed, by operation of law, to the Trustee in Bankruptcy. They so advised the Trustee in Bankruptcy, and he stated that he had no funds of the estate, and the estate had no assets, and that he could not execute any bonds or take any steps whatsoever looking to the securing of these assets on account of having no funds or assets to fight with. Thereupon, it having been in contemplation that in case the said Jordan Stokes, Jr., was of the opinion that he could secure said assets, that his employment should be upon a contingent basis, and after discussion, the said Jordan Stokes, Jr., agreed with the Trustee in Bankruptcy that he would undertake this litigation, *to secure the identical property afterwards secured; namely, the farm and products thereon;* that the question of the amount of the claims scheduled by the Bankrupt, or the amount of claims that would be probably filed by creditors against this estate, was never discussed or considered in any way by any of the parties, in the entering into of this contract. And the said Jordan Stokes, Jr. agreed that he would personally pay the expenses incident to the prosecution of said litigation, and would also execute any and all bonds necessary for the prosecution of said litigation; and at the sugges-

tion and request of the Trustee in Bankruptcy, Thos. G. Watkins, the said Jordan Stokes, Jr., was to further guarantee and hold the said Watkins harmless on account of any damages or expenses growing out of his employment.

Pursuant thereto, a petition was drafted by said Jordan Stokes, Jr. and Jos. R. West, for Thos. G. Watkins, Trustee in Bankruptcy, in which petition, the facts with reference to this estate—all of which facts had, however, heretofore been fully communicated to the Referee—were set out, and the approval of the Referee was asked, in the employment of Jordan Stokes, Jr., as Solicitor for the Trustee in Bankruptcy. This petition was drafted by the said Jordan Stokes, Jr., in the presence of Mr. Jos. R. West; and said petition so filed before the Honorable Lee Brock, Referee in Bankruptcy, is as follows:

(See page 12 of this transcript wherein Petition is fully copied.)

At the same time the petition was drafted and filed, the Order granting the prayer of the petition of the Trustee, to employ Jordan Stokes, Jr., as his Counsel upon a contingent basis, was likewise drafted and filed. Said Order which was signed by the Honorable Lee Brock, Referee in Bankruptcy, authorizing the employment of Jordan Stokes, Jr., upon a contingent basis, the original of which Order is now on file in the office of the Honorable Lee Brock, Referee in Bankruptcy, is as follows:

(See page 13 of this transcript, wherein Order of the Referee is fully copied.)

At the same time the petition and order hereinbefore referred to were drafted and filed, a contract between the said Jordan Stokes, Jr., and Thos. G. Watkins, Trustee in Bankruptcy of this estate, was likewise drafted, such contract being as follows:

(See page 14 of this Transcript wherein Contract between Jordan Stokes, Jr., and Thos. G. Watkins, Trustee, is fully copied.)

Prior to the filing of the Petition, and Order of the Honorable Lee Brock, Referee, etc., the said Stokes and West had consulted with the Referee, and it was well understood that the employment of Jordan Stokes, Jr., would, of necessity, have to be upon a contingent basis.

While the said Jordan Stokes, Jr., Jos. R. West and

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R. H. Crockett regret exceedingly the necessity of having to bring sharply to the attention of the Court all of the facts and circumstances attendant upon the execution and approval of the contract between the said Jordan Stokes, Jr., and Thos. G. Watkins, Trustee of this estate, nevertheless, on account of the statement made by the Honorable Lee Brock during the course of these proceedings on the afternoon of January 12, 1920, which statement was dictated to the Court Reporter taking the proceedings, and which statement is as follows:

IN THE MATTER OF J. H. SEDBERRY, BANKRUPT. } —January 12, 1920— Before the Hon. Lee Brock, Referee.

The Trustee moves the Court to be permitted to amend the answer to the petition by adding, immediately before the concluding clause, the following words:

> "Your Trustee, as further showing that the contract entered into between himself and Jordan Stokes, Jr., provides for fair and reasonable compensation to the said Jordan Stokes, Jr., attaches to this answer, and makes a part thereof as Exhibit "F," the transcript of the record in the Chancery Court at Franklin, Tenn., and of this Court, together with the sworn statements of Jordan Stokes, Jr., Joseph R. West, and R. H. Crockett; and your Trustee will file, on or before the hearing of this matter, the sworn statements or depositions of Attorneys giving their judgment as to the reasonableness of the compensation provided for in such contract, and as to what should be the compensation of Jordan Stokes, Jr., and their associates for their services in this matter."

BY THE REFEREE: Let that be an amendment.

MR. NORMAN FARRELL: I do not know what course of procedure the Court wishes to adopt in this case as I understand this bankruptcy case is practically in its last stages, and the only question left open now, before the matter can be finally disposed of, is the compensation for the attorneys for the Trustee.

BY THE REFEREE: Yes, sir, and a little settlement to be made up in the Chancery Court at Franklin: those are the only matters that there are to dispose of.

MR. FARRELL: I do not know whether we would be considered the moving party in the question of this

fight, or whether the gentlemen on the other side who are asking the fee, but I am willing to accommodate myself to any line of procedure the Court suggests. We will either take our proof first, or let them take theirs first, whichever you think proper.

BY THE REFEREE: It seems to me that the orderly way would be for Messrs. Stokes, Crockett and West to make a statement as to what fees they have earned in the case, and you may answer that by objecting to it or allowing it, as you see fit.

MR. JORDAN STOKES, JR.: If your Honor please, that will come in with the petition in this case. The usual and customary way in which it should be handled, according to the Bankruptcy Law, of course, would be to reduce all of these assets that have been secured to money, and then pay out the fee, and they have come in with a petition which we have answered, and I think that the more orderly procedure would be for them to read their petition, or their answer, and then we read our answer, and all of that will develop in the regular way.

BY THE REFEREE: I did not understand he desired to avoid that, and of course it would be necessary, as you are the people desiring to secure the fee, that you state what you would wish.

MR. FARRELL: Of course I contemplated reading the petition.

BY THE REFEREE: Gentlemen, for your benefit, and in order to save time, I desire to state that I shall not take into consideration all the controversies arising with Counsel at Franklin, Mr. McConnico, and all that. I regard all of that as out of the record, and I have down here simply what is the reasonable fee for these services. So far as his contract with the Trustee for the fee, which is approved by the Referee, I desire to state that the Referee on that occasion was very careful to state to Counsel that that was not a valid contract, that the bankruptcy law provided how fees should be paid, and that they should be reasonable; and that I would hear it de novo when it came up; and at every instance when it came up I insisted that was the law; and as to the right for Mr. Stokes to settle lawsuits, that would come under the same basis; that would be contrary to the law, and I will allow that contract to be filed and read into the record as evidence, and be what persuasion on my mind, and what persuasion it will be to Judge Sanford, for while Mr. Watkins had the fiduciary relationship, the law provided how fees would be paid, and it would be subject to the

same review of the bankruptcy courts as if he had not made it.

MR. STOKES: I think we can show your Honor authority to the contrary, and that the contract is valid.

BY THE REFEREE: I do not think so. I took particular occasion on that day, when I approved it, I called your attention, and started to read the Bankruptcy Act to you, and you stated that you were familiar with it, and it had to be approved by the Courts, and that could not be avoided. I do not believe we are trying to settle litigation, but trying to settle fees. I do not think I have anything to do with it. I think I am here, gentlemen, with an estate in my hands, and a reasonable fee to fix, and that is what I must look to, and nothing else. Of course, if you think I am in error you can enter an appeal. I am not going to hear a word of proof on that, if you have it to offer—

MR. STOKES: I do not think so.

MR. WEST: I do not think so.

MR. STOKES: I would suggest that we just pass this matter, and I will see the lawyers, and see what time will be agreeable with them, so that we won't be delayed, and one day this week we can get them over here, some time in the afternoon, and take all of their testimony at one time, the same afternoon.

BY THE REFEREE: That is agreeable to me, if you can get them all at one time.

(Petition, answer, proof, etc., read.)"

in justice to themselves, they feel that this matter should not go into the record without a statement from them as to what actually occurred.

The facts with reference to presentation of the petition and order thereon, authorizing the said Thos. G. Watkins, Trustee, to employ the said Jordan Stokes, Jr., and the approval of the contract between the said Jordan Stokes, Jr., and Thos. G. Watkins, were as follows:

As hereinbefore set out, the petition, the order thereon, and the contract, were all prepared and presented at the same time, the question of a contingent contract having already been discussed with the Referee, prior thereto, the percentage, or the amount, alone, not having been determined with the Referee. All of these papers were presented to the Referee on October 24, 1917, as appears from the following Minute Entry upon the Minute Book of the Honorable Lee Brock, Referee in Bankruptcy, under said date of October 24, 1917:

Joint and Separate Answer of Stokes, West and Crockett

Trustee's Petition to employ Counsel and Order thereon, Filed Oct. 24th, 1917, as appears of record (Minute Book) 57, p. 27.

The date of the contract between the said Jordan Stokes, Jr., and Thos. G. Watkins, Trustee, is likewise October 24, 1917.

This petition, order thereon, and contract executed in pursuance thereof, were presented by the said Jordan Stokes, Jr. and Jos. R. West, to the Honorable Lee Brock, Referee, on October 24, 1917; and at the time the same were presented, the Honorable Lee Brock, after reading said papers and considering the same, his only statement was with reference to the amount or percentage of such contingent contract, his statement being that he, the Referee, had in mind that 40% of the amount of the property recovered would be the proper percentage. However, after the said Jordan Stokes, Jr., had explained to the Referee that he not only was giving his services, but that in addition, he was having to put up all the necessary money to prosecute these suits, and in addition, would have to personally execute all bonds for the prosecution of such litigation, and also, guarantee and indemnify the Trustee in Bankruptcy against any damages or expenses growing out of his employment, or of any suits instituted by him. Upon this explanation being made, the Honorable Lee Brock then and there, on October 24, 1917, signed the Order heretofore copied at length in this answer, the original of which, signed by him, is on file in his office. In addition, the Honorable Lee Brock, Referee in Bankruptcy, did then and there, on October 24, 1917, approve without reservation of any kind, in the presence of the said Jordan Stokes, Jr., and Jos. R. West, the contract entered into between the Trustee in Bankruptcy and the said Jordan Stokes, Jr., which has hereinbefore been copied at length in this answer.

The said Stokes and Associates would further state, that the Honorable Lee Brock, Referee, is in error in his statement that he stated at the time said contract was approved by him, that it was invalid, or that it was subject to revision or review—or any statement of that nature, as there was nothing said whatsoever with regard to said contract being invalid or any revision or review of said contract, at the time it was entered into, or subsequent thereto, except as will be hereinafter stated.

The said Stokes and Associates would further state to the Court, that said contract was never questioned by any one, and that they proceeded with the litigation at Franklin, and that the said Jordan Stokes, Jr., has com-

plied with the terms of his contract; and for the first time, and long after the successful termination of this litigation at Franklin, Tenn., and the securing and vesting of title to this property in the Trustee in Bankruptcy, and at a time, namely: on the 9th day of September, 1919, when the said Jordan Stokes, Jr., having received $8,000 from L. W. Buford and Newt. Cannon, Jr., the Receivers of the Chancery Court at Franklin, Tennessee, which had been ordered to be turned over to the Trustee or his Solicitors, took said $8,000, consisting of two checks of $4,000 each, to the Trustee, and in company with the Trustee, went to the office of the Referee in Bankruptcy and stated to the Referee that he had secured $8,000 from the Receivers at Franklin, and that he desired to turn this money over to the Trustee and receive from the Trustee, a check for $4,000, his one-half of said $8,000, stating at the time, that he had not had time to have his stenographer figure up his personal expenses in conducting this litigation, but that such expenses could be paid to him later, and calling the Referee's attention to his contract providing for a division of all funds and property secured, equally between the Trustee and the said Jordan Stokes, Jr. The Referee, on this occasion, stated that he would make a payment on account, but that he did not like to pay out that much, stating that his act in approving this contract was subject to review. The said Jordan Stokes, Jr., at first questioned the right of review, when the Referee stated: "I will show you the law," and reached up as though to get Collier on Bankruptcy, stating that all of his acts were subject to review on appeal to the District Court. To this, the said Jordan Stokes, Jr., readily assented, stating that that was true, but that his contract was binding upon the Referee, and that in his opinion, the only question upon review would be as to whether the contract provided for reasonable compensation, taking into consideration all the facts and circumstances existing as of the time it was entered into. Nothing further was said with regard to this matter, and he allowed the said Jordan Stokes, Jr., $3600.00, and the Trustee gave him a check for that amount out of the $8,000.00.

The said Stokes and Associates were surprised at the statement made by the Referee, hereinbefore quoted, that he had on October 24, 1917, approved the contract, and at the time of approval had stated that the contract was invalid and subject to revision—such statement being made by the Honorable Lee Brock on January 12, 1920, in the progress of the hearing of this matter.

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Said Stokes and Associates, jointly and severally state that this was the first intimation that they had ever had that the Honorable Lee Brock, Referee, considered said contract invalid, or subject to revision in any way; and they respectfully state that the Honorable Referee is in error, and has evidently, on account of the vast number of cases coming before him, become mixed up as to the statements made by him, and has confused the statement made after the successful termination of the litigation at Franklin, and upon the occasion of the said Jordan Stokes, Jr.'s turning over $8,000, which was the only time that it was even intimated that this contract was invalid and subject to revision or review, until the statement of the Referee, on January 12, 1920.

The said Stokes and Associates are positive as to this matter, and the said Jordan Stokes, Jr., separately states that he would under no circumstances have undertaken this employment and agreed personally to pay all of the expenses of prosecuting this litigation, and, in addition, have rendered himself personally liable to a considerable sum on account of damage suits and costs, if unsuccessful, without a definite contract; and if there had been any question with regard to said contract, the said Jordan Stokes, Jr. states he would never have undertaken this employment and rendered himself personally liable in accord with said contract, in the prosecution of these suits and the securing of this property. And the said Jordan Stokes, Jr., further states, that there was no condition with reference to said contract other than as therein expressed, and that he relied upon said contract and associated with him Mr. Jos. R. West and Mr. R. H. Crockett, and that he now relies upon said contract, as do his Associates, claiming through him.

The said Stokes and Associates would further state that after the execution of said contract between Jordan Stokes, Jr., and the Trustee in Bankruptcy, on October 24, 1917, and the unqualified approval thereof by the Referee, that the said Stokes and West did, on the same day, namely, October 24, 1917, file their Original Bill in the name of the Trustee in Bankruptcy, against defendants J. H. Sedberry, Z. C. Sedberry, Trustee, Z. C. Sedberry, individually, W. H. Sedberry, J. B. Sedberry, Catherine Sedberry Overall and Falley Overall, her husband, the Williamson County Banking & Trust Company, J. F. Eggleston, J. C. Eggleston, R. H. Kittrell, Trustee, and Mary D. Glass, Executrix of W. H. Glass, deceased. That after the filing of the Bill, the said Stokes and West continued their investigations, interviewing witnesses, looking up records, having copies made of records in the

Register's Office of Williamson County, and County Court Clerk's Office, and an entire transcript of the record in the Bankruptcy Court, including the general examination of the bankrupt and the members of his family, to be used as evidence in the Chancery Court case at Franklin, Tennessee, and took the depositions of parties from whom valuable evidence was secured, showing the fraud and trickery of this bankrupt, all of which was strenuously opposed by the bankrupt and his family, through the able Counsel employed by them. That they, in addition, investigated the records of the Railroad office at Thompson Station, Tennessee, with regard to shipments that had been made from said farm both prior to bankruptcy of the said Bankrupt and subsequent thereto.

Said Stokes and Associates further state, that on May 18, 1918, D. M. Ferry Company filed a petition in the Chancery Court cause, seeking to secure possession of the turnip seed growing upon said farm, which they claimed at first were the property of J. H. Sedberry, the Bankrupt, and that they were entitled to under a contract entered into between themselves and J. H. Sedberry, prior to bankruptcy. Upon the filing of this petition, Jordan Stokes, Jr. associated R. H. Crockett, an Attorney of the Franklin, Tennessee, Bar with him to assist him in the further prosecution of these suits. Demurrers were prepared to the petition of D. M. Ferry Company originally filed, which resulted in the said D. M. Ferry Company amending their petition and claiming said turnip seed were the property of Z. C. Sedberry, Trustee, and that the contract they had with J. H. Sedberry, while said contract appeared in the individual name of J. H. Sedberry, that he was acting as Agent for Z. C. Sedberry, Trustee (an undisclosed principal). This petition, as amended, came on for hearing and resulted in a decree providing that the said D. M. Ferry Company should pay the amount provided for in said contract for said turnip seed, namely, 13½ cents per pound, being $5,287.00. And by the terms of said decree, the said D. M. Ferry Company were required to execute bond in the sum of $21,000, conditioned that in case the Court should decree the title to said turnip seed to be in J. H. Sedberry, or his Trustee in Bankruptcy, that then they should pay the difference between 13½ cents per pound, and the market value of said turnip seed, in no event to be less than 40 cents per pound. That a bond was executed in accord with said decree, said bond reading to L. W. Buford and Newt. Cannon, Jr., Receivers of the Chancery Court at Franklin, Tennessee.

Said Stokes and Associates continued their investigations, preparation, taking of depositions, cross examination of witnesses produced by defendants in said Chancery Court case, all of which consumed a large amount of time and extended over a period of approximately two years, from the date of the filing of the Bill until the final trial of the cause before the Chancellor, during which time, as heretofore stated, they devoted a large amount of time to such investigations, examination of records, taking of depositions, preparation of the record, and generally preparing the case for trial. They were actually engaged in the trial of said cause for several days, and that two days or more were consumed in the argument of said case, resulting in the Chancellor sustaining the Bill filed by them for the Trustee in Bankruptcy, in all respects, and the granting to the Trustee, all the relief prayed for by him in his Bill.

Said Stokes and West state, that they made many trips to Franklin and Thompson Station, Tennessee, some time going by Interurban, and some time going by automobile. That in the preparation of certified copies of records, that Miss Aline J. Swain, the regular stenographer of Jordan Stokes, Jr., went to Franklin on a number of occasions, in the making of these copies. She also went to Franklin, Tennessee, in the taking of depositions, and that she did a very large amount of stenographic work generally, in the preparation of copies of the bankruptcy proceedings, which were used in evidence in the Chancery Court case, and in the making of many other records, and in the transcribing of a large number of papers, some of which were not introduced in evidence, although all of said work was necessary to the successful prosecution of this case. And the said Stokes and West state of their own knowledge, that they know that Miss Aline J. Swain devoted many hours over time at night and on Sundays, in the preparation and transcribing of papers and the work done by her as a stenographer in this case; and they state that the charge of $500.00 for her services is reasonable, and in fact, much less than would have been the charges of a regular Court Reporter for the same work as was done by her.

Said Stokes and Associates would further state that they have hereinbefore set out the details of the conferences leading up to the signing and entry of the Final Decree on July 31, 1919, in the Chancery Court at Franklin, Tennessee, and they have hereinbefore set out generally the facts and circumstances in regard to all matters occurring subsequent to the entry of said decree, and the said Stokes and Associates being familiar with all the

facts set out in the Answer of Thos. G. Watkins, Trustee, filed herein, to the petition of Sedberry and others, that they do adopt all of the allegations of said Answer, and that the statements therein contained are true.

Said Stokes and Associates would further state that it was understood by Thos. G. Watkins, Trustee in Bankruptcy, by the Honorable Lee Brock, Referee in Bankruptcy, by Jordan Stokes, Jr., and Jos. R. West, that at the time the contract between the Trustee and the said Jordan Stokes, Jr., was entered into, on October 24, 1917, that the property that the said Jordan Stokes, Jr., was of the opinion he could secure, was the farm and the products located thereon, and the crops to be gathered therefrom; and that it was distinctly understood between all the foregoing parties that this was the property contemplated in said contract, that the said Stokes would endeavor to secure for this estate, and that this is the same identical property that was secured for this estate, which was of the approximate value of $100,000, and is all of the property that has been secured for this estate.

And now, having fully answered all of the allegations in said petition, and having set out in detail, all the facts and circumstances in connection with this matter, the said Jordan Stokes, Jr., the party with whom the Trustee in Bankruptcy entered into the contract of employment, and the said Jos. R. West and R. H. Crockett who were associated by the said Jordan Stokes, Jr., with him in the prosecution of said suit, and who claim through the said Jordan Stokes, Jr., under his contract with the Trustee in Bankruptcy, respectfully pray the Court to carry out the terms of said contract, and to pay to the said Jordan Stokes, Jr., his expenses, amounting to $1,127.28, and that he be paid a fee of one-half of the entire assets, namely, the value of the farm, the judgment against D. M. Ferry Company and the U. S. Fidelity & Guaranty Company, the actual cash $8,000.00—turned over to the Trustee, and the value of all the personal property in the hands of the Receivers of the Chancery Court at Franklin, Tennessee, deducting alone from said one-half of all of said property, the $3,600.00 heretofore paid to said Jordan Stokes, Jr.

And the said Stokes and Associates further pray that if deemed necessary, that this Answer be taken and treated as a Petition, to the end that they be granted the relief prayed for.

Jordan Stokes, Jr.,
Joseph R. West,
R. H. Crockett,
By Clarence T. Boyd,
John R. Aust,
Solicitors.

State of Tennessee }
County of Davidson }

Jordan Stokes, Jr., Jos. R. West, and R. H. Crockett severally make oath, that the statements contained in their foregoing Answer, made as of their own knowledge are true, and those made on information and belief, they believe to be true, and the statements in said Answer as a whole are true, to the best of their knowledge, information and belief.

Jordan Stokes, Jr.
Jos. R. West,
R. H. Crockett.

Subscribed and sworn to before me this 20 day of January, 1920.

Aline J. Swaine,
(seal) Notary Public.

ANSWER OF J. H. SEDBERRY AND OTHERS TO CROSS PETITION OF STOKES ET AL.,—Filed February 23, 1920.

ANSWER OF J. H. SEDBERRY, Bankrupt herein, and of Z. C. Sedberry, Trustee and individually, J. B. Sedberry, W. H. Sedberry, Catherine Sedberry Overall and husband, Falley Overall, to the petition of Jordan Stokes, Jr., et al., filed herein January 21st, 1920.

For so much and such parts of said petition as they are advised it is necessary or material for them to answer, they say:

I.

That the contract on which said claim of Jordan Stokes, Jr., and associates is based, dated October 24,

1917, is of no validity, force or effect and is contrary to both the laws of Tennessee and of the United States, in at least the following named respects:

1. It is a champertous contract under the laws of Tennessee in that the attorney under said contract contracts and agrees with the client to bear all the expenses of the suit and further guarantees to hold the client harmless against any and all damages growing out of his employment.

2. It violates the provisions of the Bankruptcy Act in that the trustee in bankruptcy under said contract abdicates utterly the power authority and discretion vested solely in him under said Act (and then only when approved by the court), to compromise and settle claims and causes of action and vests all such absolutely in the attorney, beyond the control of either the trustee or the court.

3. It violates the Bankruptcy Act further in that the Act permits its officers only to contract and bind the bankrupt's estate for "actual and necessary expenses." Anything beyond a reasonable fee is neither actual or necessary.

4. Said contract likewise violates the laws of Tennessee in that the amount contracted for is exorbitant. The laws of Tennessee views contracts between attorney and client with a critical eye and, when the amount contracted for is exorbitant, strike down and set aside the co...ract.

If this be true, then no sanction or approval by the Referee in Bankruptcy, whether on the day the contract was executed (Oct. 24, 1917) or afterwards, could give said contract any life, force or effect. All of which the said Jordan Stokes, Jr., and associates were bound to know and the more especially so as they were members of the Bar.

Inasmuch, therefore, as said Stokes and associates do not base their claim on a quantum meruit but expressly on said illegal contract, these respondents ask that no compensation whatsoever can be allowed them and their claim should be dismissed as founded on an illegal contract. (If and only when said contract is abandoned as a basis of said attorney's claim do these respondents offer to pay the reasonable attorney's fee as set forth in the stipulation signed in Mr. McConnico's office.)

II.

Without waiving this ground of defense, respondents proceed and answer the other matters stated in the petition.

All that part of the petition wherein the proceedings at Franklin, Tennessee, in the Chancery case are detailed, both those anterior to the decree, attendant on it and subsequent thereto, are denied and the true facts are as set forth in the petition of these respondents filed herein on December 18, 1919, and need not be repeated here, but are to be considered as if repeated now and here. The said petition of December 18, 1919, shows why these respondents did not appeal from said decree; why they formally agreed not to appeal; and what the agreement was and also their utter surprise afterwards on being informed that Messrs. Stokes and Associates were not asking a reasonable fee, based on actual and necessary services rendered the trustee and the creditors of the bankrupts' estate, but were claiming half of the entire estate of these respondents under said contract. This was the first time these respondents knew or ever had intimated to them that any such contractual claim existed or would be made the basis of a fee and respondents declined and do decline to pay it or consider it.

In this connection respondents deny that, even by way of compromise and settlement of said fee, did they or their solicitors offer or suggest the sum of $10,000 as a fair and reasonable fee or indicate a willingness to pay any such sum. On the contrary they think such an amount, based on the debts and claims here involved, and the facts of this record, would be absurd, and most unjust to these respondents.

With reference to the stipulation made at Mr. McConnico's office in November 1919: These respondents would state that they had employed Mr. McConnico to take steps to have the decree at Franklin set aside and vacated or an appeal granted therefrom and such would have been done, except that Jordan Stokes, Jr., and his Associates agreed to the alternative proposition of these respondents, to-wit, that they withdraw from their fee contract and put this claim on a quantum meruit basis. This was done and a contract to that effect was signed both by Mr. Stokes and by Mr. McConnico for these respondents. It is true Mr. McConnico said the same was subject to disapproval by his clients—but unless it was, it would stand. The contract was forwarded then by Mr. McConnico to respondents' other counsel for their

approval, was signed and returned to Mr. Handly, their attorney in Nashville, and while by some oversight it was not actually handed to Mr. Stokes until the hearing herein, nevertheless he was advised of its acceptance before his attempted repudiation thereof.

The very filing of the petition herein by these respondents on December 18, 1919, asking that this Court fix a fair and reasonable fee for Mr. Stokes and Associates, was in itself an affirmance of the agreement and in furtherance both of the stipulation entered into on November 19, 1919, made Exhibit "B" to Answer of Thos. G. Watkins, Trustee—of the settlement looking to the dismissal of the bankruptcy proceedings, payment of the debts and costs in full and reasonable attorney's fee.

III.

As to the value of the services rendered by Mr. Stokes and Associates to the trustee in bankruptcy of J. H. Sedberry, Trustee, these respondents would show:

That the said petition in bankruptcy was filed in August 1917, and there was scheduled therein some $18,000 of unsecured creditors (part of which, however, were disputed). At the time respondent J. H. Sedberry prepared his schedule aforesaid he was of the opinion and was so advised by his counsel that whatever interest he had in and under said deed made to his wife as trustee, in 1902 was not such property or asset of his as was required to be listed in the schedule of assets in bankruptcy.

That proceedings were thereafter instituted in the Chancery Court at Franklin by the trustee, with the result as shown in the record and as stated herein and a final decree, foregoing by respondents their right of appeal was made and entered into solely for the reasons and under the circumstances set forth in respondent's petition filed herein on December 18, 1919. The litigation did not go beyond said Chancery Court.

All other allegations not here and now denied or explained are here and now denied and petitioners called on to prove same, if material or relevant to the issues involved.

J. H. Sedberry
Z. C. Sedberry
J. B. Sedberry
W. H. Sedberry
Catherine Sedberry Overall
Falley Overall,

Respondents,
By Norman Farrell, Attorney.

State of Tennessee }
Davidson County }

I, J. C. Eggleston, do make oath and say that I was solicitor for J. H. Sedberry, during the matters set forth in the foregoing answer; that I am personally acquainted with the facts se tforth in said answer; that the matters of fact therein stated are true and the matters of law I believe to be true.

J. C. Eggleston.

Sworn to and subscribed before me at Nashville, Tenn., this February 23, 1920.

Lee Brock,
Referee.

ABRIDGEMENT OF THE TESTIMONY TAKEN UPON THE ISSUES MADE UP BY THE RESPECTIVE PETITIONS AND ANSWERS, TO FIX COUNSEL FEES, FILED BEFORE THE REFEREE—Filed December 21, 1920.

The original testimony of Jordan Stokes, Jr., Jos. R. West, and R. H. Crockett, was embodied in an affidavit, which was treated as their original testimony, and the abridgement of their testimony, is as follows:

The Joint and Separate Affidavits of Jordan Stokes, Jr., Jos. R. West and R. H. Crockett.

Affiants make oath in due form of law, as follows:

Affiant Jordan Stokes, Jr., states that he was employed by Thos. G. Watkins, Trustee in Bankruptcy of the above named estate, as his Counsel, and that he employed, or associated with him to assist him in the prose-

cution of this matter, Mr. Jos. R. West, an Attorney of the Nashville, Tennessee, Bar, and Mr. R. H. Crockett, an Attorney of the Franklin, Tennessee, Bar.

Affiants jointly and severally make oath that they did not meet with Mr. Avery Handly and Judge Jos. C. Eggleston, Counsel for the petitioners in the Chancery Court case at Franklin, Tennessee, for the purpose of drafting a decree, but that after the Chancellor had delivered his opinion and judgment sustaining the Bill filed by Thos. G. Watkins, Trustee, against J. H. Sedberry and others, that Mr. Jordan Stokes, Jr., and Mr. Jos. R. West prepared a decree, in Nashville, Tennessee, carrying into effect, the judgment of the Chancellor, and that Mr. Stokes and Mr. West then went to Franklin, Tennessee, and submitted said decree as drafted by them, to Mr. Handly and Judge Eggleston, Counsel for the defendants in the Chancery Court case. That this is usual and customary; and that upon submitting said decree as drafted by them, all of affiants being present at the meeting, objections were raised to certain provisions of the decree by Mr. Handly and Judge Eggleston, particularly with reference to the adjudication as provided in the decree as against the Williamson County Banking & Trust Company, and the order of Reference with regard to the liability of the Williamson County Banking & Trust Company, as embodied in said decree as originally drawn by Mr. Stokes, in Nashville, Tennessee.

Affiants further state, that there was no agreement whatsoever that the Sedberrys would forego their right of appeal and allow the title to the land to be decreed to the Trustee, upon condition that the true amount of the bankrupt's debts be arrived at and the costs and expenses of the bankruptcy proceedings, including an attorney's fee to the Solicitors for the Trustee, to be fixed by the Court of Bankruptcy; and that the funds in the hands of the said Chancery Court receivers should be turned over to the Trustee, to be distributed by order of the Court of Bankruptcy as a partial dividend to the creditors whose claims had been duly filed and allowed; and that the amount necessary to pay off the remainder of the claims, and after the dividend aforesaid, together with costs of the administration, had been ascertained, that the Trustee would join with the petitioners (the Sedberrys) in a mortgage on said property to raise the necessary sum in order that the bankruptcy case might be finally settled and wound up.

Your affiants have read the allegations contained in the petition filed by J. H. Sedberry and others, in this

cause, on December 19, 1919, making the allegations as above, and these affiants state that said allegations are untrue.

Affiants deny that they, or any one of them, ever at any time agreed that said farm would not be sold by decree of the Court.

Affiants further make oath, that the facts with reference to this matter were as follows:

Affiants, all of them, were present in the office of Judge Jos. C. Eggleston when the original decree as drafted by Mr. Stokes, in Nashville, Tennessee, was submitted. Objection was raised by Judge Eggleston as to the provision of the decree ordering a reference and adjudicating the liability on the part of the Williamson County Banking & Trust Company, particularly on the question of a mortgage of $2,000 that had been taken by said Williamson County Banking & Trust Company on the growing crop on this farm, such mortgage being taken a few days after the bankruptcy petition was filed by the bankrupt. Objection was also made to another provision of the decree as originally drafted, in which decree it was provided, that the farm located in Williamson County should be sold by the Receivers in the Chancery Court case and the proceeds of such sale turned over to Thos. G. Watkins, Trustee in Bankruptcy. Mr. Handly stated that he did not see any reason for having a sale of it by the Receivers in the Chancery Court case at Franklin and paying them a commission for the sale of this farm, and then in turn having to pay commissions to the Trustee in Bankruptcy, and suggested that instead of this, that in carrying out the judgment of the Court, in the Decree, to divest the title to this farm out of the Sedberrys and vest the absolute title in Thos. G. Watkins, Trustee in Bankruptcy of this estate.

Affiant Jordan Stokes, Jr., stated in these conferences, that he didn't care whether they appealed the case, or whether they didn't; that what he desired, was to get a decree entered, embodying the judgment of the Court. However, after some discussion, affiants finally stated that they would eliminate the order of reference with reference to the liability of the Williamson County Banking & Trust Company and would not insist upon any further steps being taken in the contempt proceedings against this bankrupt, or in any other proceedings they might contemplate taking; and instead of ordering the farm sold by the Receivers of the Chancery Court at Franklin and the proceeds of sale turned over to Thos. G. Watkins, Trustee in Bankruptcy, that in the redraft

of the decree, it would be provided that the title to the farm be divested out of J. H. Sedberry and others and vested absolutely in Thos. G. Watkins, Trustee in Bankruptcy. And in turn, Judge Eggleston and Mr. Handly agreed that such a decree should be final and that they would not seek a revision thereof, by appeal or otherwise.

Thereupon, Mr. Stokes and Mr. West returned to Nashville, Tennessee, and drafted a decree identical with the original decree as drafted by them, except that the order of reference as to the Williamson County Banking & Trust Company, and the adjudication of said bank's liability was eliminated; and instead of ordering the Chancery Court Receivers to sell said farm and turn over the proceeds of such sale to Thos. G. Watkins, Trustee in Bankruptcy, the title to said farm was divested out of the Sedberrys and vested absolutely in the Trustee in Bankruptcy, subject alone, to a small mortgage indebtedness of $2,500.00.

After re-writing the decree as above outlined, affiants Stokes and West, in a day or two, went back to Franklin, Tennessee, and in company with affiant R. H. Crockett, submitted this decree to Judge Eggleston, which decree was finally entered upon the Minutes as the decree of the Court, after some discussion, but no agreement or condition whatsoever other than as herein set out. Judge Eggleston, however, stated at this second conference, that while he had authority to sign the decree as drawn, that, nevertheless, he desired to see Sedberry before doing so. Thereupon, affiants left the office of Judge Eggleston in Franklin, Tennessee, and went to the office of Mr. R. H. Crockett, in Franklin, Tennessee, and Mr. W. J. Smith, who is in Judge Eggleston's office, in about thirty minutes or three quarters of an hour, came to the office of Mr. R. H. Crockett and requested affiants to come to the office of Judge Eggleston; which affiants did. Thereupon Judge Eggleston stated that he had seen Sedberry and that the decree was all right; and he accordingly signed this decree, which decree, however, was in no sense a consent decree, except with reference to its finality; all of the provisions of the decree being the judgment as pronounced by the Court.

Affiants further state, that after this decree was signed, there was some discussion, and Judge Eggleston stated that maybe, or possibly Sedberry could raise the money to pay himself out of bankruptcy and requested affiants to wait for thirty days in order to allow said Sedberry time in which to see what he could do. In the course of the discussion, it having been developed that

Judge Eggleston had a very sick daughter and that he would have to go to Denver on account of her health, Mr. Stokes stated that he would have the Trustee in Bankruptcy refrain from advertising this property for sixty (60) days instead of thirty (30) days as requested by Judge Eggleston, in order that ample time might be given. Judge Eggleston also asked Mr. Stokes, in this last conference, that in case Sedberry could raise the money, what would be the Attorney's fee for the Trustee in Bankruptcy, and Mr. Stokes replied that he would not discuss the matter with him, that that was a matter exclusively within the jurisdiction of the Bankrupt Court.

The above and foregoing is all that occurred, in so far as affiants agreeing to any conditions of any kind.

Affiants further make oath that after the signing of the decree, Judge Eggleston stated to Mr. Stokes, who in addition to being Counsel for the Trustee in Bankruptcy of this estate, was also Counsel for the Broadway National Bank of Nashville, Tennessee, in substance:

"Old man Sedberry seems to feel, or think that your bank is kind of gouging him in the amount of their claim; are you willing to do anything about that?" or words to that effect. Mr. Stokes thereupon stated, that he was willing to recommend to Mr. A. E. Potter, President of the Bank, to make the amount of the bank's claim, the actual loss sustained by the bank, together with interest, expenses, and Attorney's fees, and not to stand upon their legal right to prove the claim as proven, but that the bank did not feel very kindly towards Mr. Sedberry on account of the numerous remarks that Mr. Sedberry had made, despite the fact that the bank had been very lenient with him and granted him time, and had worried with him but could get no satisfaction. And Mr. Stokes further stated that Mr. Potter usually took his advice and that he thought that the matter could be settled this way, but would not bind the bank to any settlement until he saw Mr. Potter.

Affiant Jordan Stokes, Jr., separately makes oath, that immediately upon his return to Nashville, he communicated with Mr. A. E. Potter, President of the Broadway National Bank, and acquainted him with what he had stated to Judge Eggleston, and requested that the amount of the bank's claim be figured in accord therewith, which was done, and the amount of the claim so arrived at was approximately $5,500.00. And affiant Jordan Stokes, Jr., immediately telephoned Mr. Handly and told him that the bank's claim would be $5,500.00, which was satisfactory with Mr. Handly.

Abridgement of the Testimony

Affiants Jordan Stokes, Jr., and Jos. R. West, make oath that upon their return to Nashville, Tennessee, after the signing of the final decree in the Chancery Court case at Franklin, Tennessee, that they immediately acquainted Mr. Thos. G. Watkins with what had transpired, stating that there had been no agreement whatsoever on their part, except that the Trustee was to refrain from advertising this farm for a period of sixty (60) days; and that in addition, they had agreed not to press the contempt proceedings against this bankrupt, or other proceedings of a criminal nature.

Affiants would further state, that there were no conditions upon which J. H. Sedberry and others, or their Solicitors could rely, in the signing of this decree, other than, that at the time affiants were surrendering rights declared to exist in the Trustee as against the Williamson County Banking & Trust Company, and to refrain from proceeding further with contempt proceedings against the bankrupt, or any other proceedings of a criminal nature; and then, after the decree was signed, that the Trustee would refrain from advertising this property for sale for a period of sixty (60) days from the entry of the decree. All of these conditions have been fully and completely complied with by affiants and Thos. G. Watkins, Trustee in Bankruptcy of this estate.

Affiants further make oath, that conferences were had with Mr. Avery Handly and Judge Jos. C. Eggleston with regard to the question of the Attorney's fees for the Trustee in Bankruptcy, to see if the amount of such fees could not be agreed upon in dollars and cents. That it was distinctly understood and agreed at these conferences, that all parties were at liberty to speak frankly, and make any proposition they saw fit; and that by so doing, they should not in any way, waive any rights that any parties had.

It is true, that in these conferences, the value of the farm, personal property, moneys, the judgment against the D. M. Ferry Company and the United States Fidelity & Guaranty Company, were considered; and after deducting the expenses and costs, upon a reasonable valuation, it was ascertained that the net estate would be approximately $98,000. And it is true that in these conferences, Mr. Stokes relied upon his contract, stating that he would be entitled to one-half of this net amount, or $49,000, as compensation for himself and his Associates. It is true, that Judge Eggleston and Mr. Handly tenatively offered $10,000 as Attorney's fees, which sum was refused by affiant; and that thereupon, Judge Eggleston

stated that he was very anxious to settle this matter and asked that affiants see if they could not agree to make a better offer than provided for in the contract. Affiants, after conferring, it is true, offered to settle the question of Attorney's fees at $40,000. However, such offer was made in an effort to settle the matter without any further litigation. Neither Judge Eggleston, nor Mr. Handly, made any other proposition, and this matter ended.

Affiants further make oath that Mr. K. T. McConnico had a conference with Mr. West and Mr. Stokes, on November 18, 1919, at which conference, Mr. K. T. McConnico stated that he had been approached in the matter, to see if he could not accomplish, as he understood it, one of two things: Either, that affiants agree to enter a decree eliminating the last paragraph of the final decree, that is, the paragraph providing that the decree in the Chancery Court case at Franklin, Tenn., should be final, and no parties would seek a revision thereof, by appeal or otherwise; or then, for Mr. Stokes not to rely upon the letter of his contract, but proceed as outlined in the copy of the stipulation made Exhibit "B" to the Answer of Thos. G. Watkins, Trustee; stating, that if either one of these were agreeable to affiant, that he felt that it was all that any one could ask in the matter. Mr. McConnico also stating in this conference, that his reason for taking the matter up, was because he believed, or felt, that Mr. Handly and Judge Eggleston had been placed in an embarrassing position on account of this contract, and that his efforts were directed alone, to the relieving of what he termed—an embarrassing position of his brother lawyers, with their clients.

Affiant Jordan Stokes, Jr., immediately telephoned Mr. R. H. Crockett, who came to Nashville on the next day, namely, November 19, 1919, and after a conference between affiants, the stipulation made Exhibit "B" to the Answer of Thos. G. Watkins, Trustee, to the petition filed in this cause on December 18, 1919, was drafted; and affiants on the afternoon of November 19, 1919 went to the office of Mr. K. T. McConnico, with such stipulation and submitted the same to him for approval, and the said Jordan Stokes, Jr., then and there signed such stipulation. Mr. McConnico, however, stated that he did not feel that he had the authority to close this matter, nor did he desire to assume the authority to execute this stipulation; he, however, stating that he thought this stipulation was all that anybody could ask and that he would immediately turn the stipulation over to Mr. Handly or Judge Eggleston so that it could be executed. Both copies of the

stipulation were signed and left with Mr. McConnico by Mr. Stokes, in the presence of all affiants.

Affiant Jordan Stokes, Jr., makes oath that several days after he had signed this stipulation in duplicate and left it with Mr. McConnico, that he called Mr. Avery Handly on the telephone, requesting some information as to whether they were going to enter into this stipulation. Mr. Handly advised affiant Stokes, that such stipulation had been forwarded to Judge Eggleston at Franklin, and by him sent to the Sedberrys in Texas. Thus, the matter of this stipulation hung fire and nothing was done, and said stipulation has never been accepted by Mr. Handly or Judge Eggleston, or the Sedberrys, or anyone authorized to represent them, and Mr. Stokes' copy has never been returned to him; but, on the contrary, the petition of the Sedberrys was filed in this Honorable Court on December 19, 1919, utterly ignoring any question of the stipulation, and making false and untrue allegations. Thereupon, on January 7, 1920, affiant Jordan Stokes, Jr., wrote a letter to Mr. McConnico withdrawing all question of this stipulation, it having not been accepted, and thus, the question of any stipulation is at an end. A copy of said letter is made a part of the Answer of Thos. G. Watkins, Trustee, as Exhibit "C."

Affiants further state, that the terms of the contract entered into between Jordan Stokes, Jr., and Thos. G. Watkins, Trustee in Bankruptcy, on October 24, 1917, to the personal knowledge of Jordan Stokes, Jr., and to the knowledge, information and belief of Jos. R. West and R. H. Crockett, has been fully complied with by the said Jordan Stokes, Jr., in all respects.

Further, affiants saith not.

This, the 9th day of January, 1920.

Jordan Stokes, Jr.,
Jos. R. West,
R. H. Crockett.

Subscribed and sworn to before me,
this 9th day of January, 1920.
Aline J. Swain,
Notary Public.
(SEAL)

JORDAN STOKES, JR.

Cross Examination.

Some time subsequent to August 24, 1917, I was employed verbally by the trustee in bankruptcy, Mr. Watkins. My subsequent written contract with him was dated October 24, 1917.

I had made some investigations about the farm, together with the crops and stock thereon, in Williamson County, prior to the bankruptcy of Mr. Sedberry, and prior to the appointment of the trustee and also subsequent thereto. These prior investigations, in the main, were with reference to the deed itself; I didn't think the deed itself was good on its face because it created a spendthrift trust; I thought it was subject to attack on its face.

I represented before my employment by the trustee, the Broadway National Bank and also, the Rumley Company, two of Sedberry's largest creditors. (I had their claims for collection.)

I knew at the time I filed the suit at Franklin against Sedberry, of Timmons suit against Sedberry there, and had read the papers in that suit. My impression is that this suit attacked the deed on its face, and mainly sought to secure a one-fifth interest in the farm, and not to recover the entire property.

Before bringing suit at Franklin I had examined Sedberry, his wife and other relatives in the Bankruptcy Court at Nashville before the Referee and I filed copies of, and the originals of, these depositions, and also all other records in the Bankruptcy Court, in the Chancery suit at Franklin as part of our case.

It would be hard to say how many trips I made with Mr. West from Nashville to Franklin. I went every time it was necessary. As a matter of fact I only took and introduced a few depositions in the case at Franklin, in addition to the transcript of the examination of the Sedberrys in the bankruptcy court at Nashville. I interviewed, however, a great many more people than I introduced.

Franklin is eighteen miles from Nashville, with an interurban street car every hour. While I could have gone by street car, I used my own automobile, as I sometimes went on to Thompson Station—eight or ten miles beyond. I could not get from Franklin to Thompson Station without hiring an automobile. It would be hard to say how many people I interviewed. Mr. Veevers at Thompson Station, Mr. Howard, and their clerks. I

went over a lot of checks of Mr. Howard, and also a lot of checks in the Bank there. I interviewed parties in Franklin and went over Mrs. Sedberry's checks in the bank there, and made a transcript of them. Also interviewed Mr. Beasley and other people in and around Thompson Station and Franklin. Talked to everyone I thought could throw light on the case.

The trial of the case at Franklin lasted several days; I should say four or five days; and the Chancellor's decision was not appealed from.

The way the Ferry Seed Company came into the case was this: Some ten days or two weeks before they filed their petition in the Chancery case at Franklin, their representative showed us their contract with Sedberry under which they claimed the seed. The price of the seed in the contract was 13 1/2 cents a pound and the seed was then worth 40 cents a pound. I declined, on behalf of the trustee, to carry out the contract, as he had a right to do under the bankruptcy law, and insisted that this turnip seed belonged to Thomas G. Watkins, Trustee, and that the Ferry Company merely had an unsecured claim which they must file in the Bankruptcy Court. After this action by the trustee, Ferry & Co. filed their petition in the Chancery case.

The Tennessee cases on which I relied to set aside the conveyance made in 1902 to Mrs. Sedberry, were Bank v. Watkins, reported, I think, in 14 Cates; Smith v. Henson, Yost v. Hudeburg, and the Massengill case.

I was not present in the Chancery Court at Franklin when the Chancellor delivered his opinion.

The statement of the expenses I incurred has been exhibited, and is in the court files. Miss Grace Dawson, J. F. Galloway and L. M. Harwood and Miss King named therein, are public stenographers. Miss A. J. Swain, named therein as entitled to $500.00, is a private stenographer employed in my law office on a regular salary and was such at the time she did this work. I was paying her a regular salary. She lived in Franklin and did some of this work in this case for me out there such as copying records, after office hours, and also worked on Sundays on this work. Her charge of $500.00 was less than the court reporters charge for the same work. She not only copied records for me, but took a good many depositions in the Chancery Court case for me—Mr. Stovall's, Mr. Timmons'—I don't remember off hand, what other depositions she took. She did not take the examination of the bankrupt and his relatives—that was taken by Miss Grace Dawson.

Jordan Stokes, Jr. R. H. Crockett

The $500.00 item of expenses for Mr. West and myself was for going to Franklin, Tenn., and Thompson Station, Tenn., our hotel bills and other incidental expenses, etc. I kept no record of same. I am satisfied I made fifty trips or more. I am satisfied the expenses were that much, if not more. I advanced these expenses—under my contract with the trustee—relying on the contract.

Re-Direct Examination.

The amount ($500.00) I am asking for Miss Swain goes to her. The services she performed were such as she does not ordinarily perform for me in my practice.

R. H. CROCKETT.

Cross-Examination.

I live in Franklin and am a member of that Bar. Employed by Mr. Stokes shortly after the D. M. Ferry petition was filed in the case there—some time in June or July, 1918.

The trial of the chancery case there lasted three days—may have gone into a fourth day. I am not sure about it, however.

The fee Mr. Stokes, Mr. West, and I are claiming for our work is based on the idea and construction of the contract with the trustee that the whole farm, stock and crops thereon, is what we recovered from the trustee.

Mr. Stokes, when he employed me, said, in any event, he would pay me $100.00. If he was not successful that was all I was to get.

Re-Direct Examination.

The fee was contingent on success. Mr. Stokes was to bear all expenses. I was to bear none.

I first learned of Mr. Stokes' contract with the trustee, dated October 24, 1917, after the final decree had been entered in the case at Franklin. He said nothing to me about his arrangement in Nashville. I don't know about Mr. Handly, but after Mr. Stokes showed it to me, and I, on my return to Franklin, told Judge Eggleston about it, he said this was the first he knew of such a contract. This was after the decree was entered at Franklin.

Judge Jos. C. Higgins

JUDGE JOS. C. HIGGINS.

Direct Examination.

I am a member of the Nashville Bar. Have been here fifteen months. Formerly a Circuit Judge for the Seventh Circuit for eight years, and later, a member of the Court of Appeals of Tennessee, for eight years. I am familiar with usual fees charged for services rendered in civil suits.

I have read the affidavits of Messrs. Jordan Stokes, Jr., Jos. R. West and R. H. Crockett, filed in this cause, as to their services; also have examined a part of the record in the case in Chancery at Franklin, and, assuming the facts stated therein are true, and "taking into consideration all the contingencies, and using the entire estate as the basis on which to adjudge a fee, I would say that the contract made with the trustee was a reasonable one."

Assuming there had been no contract and the statements they made as to their services are true, I would say their fee ought to be not less than $30,000, considering the contingencies, the risks assumed, and everything like that. This is based on the idea there were three lawyers in the case.

Cross Examination.

If only one reasonable attorney's fee was to be paid, I might reduce my figures to a certain extent. I think the fee should be $20,000 with the element of contingency out of it. "I am of opinion that the practice obtaining in Nashville of making the compensation, about the same in contingent litigation, whether you stop it or carry it on, as a very reasonable method, and where you proceed upon contingencies and uncertainties, a lawyer takes all of the risks and expenses, there would not be much difference whether the case stopped in the first court or went on to the higher courts." I figure the fee principally on the amount of the Sedberry estate, but not wholly so, and not on the amount of Sedberry's creditors. I think the fee ought to be adjusted with reference to the whole estate and not to the amount of creditors. "I am going upon the theory that when a fraudulent vendee makes a conveyance, that he ought to forfeit every right he has to his property, and that it becomes and is wholly within the jurisdiction of the court of bankruptcy and that should be the measure on which to base fees. That is, of course, rather an argument.

Judge Jos. C. Higgins Jordan Stokes, Sr.

Q. You think he is rather ferae naturae about that?

A. Expressed pretty well in latin, if that is what you mean."

Inasmuch as there was an excess, over and above what was needed to pay creditors, I think the attorneys fee, if the debts were $18,000, should be $18,000; if the debts were $28,000, the fee should be $28,000. The attorney's fee should equal the amount of the debts, if the debts are used as a basis, and not the estate.

Re-Direct Examination.

My opinion is based on what these attorneys said they did; under the circumstances and that contract, one half the recovery would be a reasonable fee.

JORDAN STOKES, SR.

Direct Examination.

I am a lawyer at Nashville. Admitted to Bar in 1876. I am the father of Jordan Stokes, Jr. I have read the statement of Jordan Stokes, Jr., Jos. R. West, and R. H. Crockett, of their services in this case. I have made no examination of the record of the case at Franklin in the Chancery court there. Assuming the facts stated by these attorneys are true, that the contract exhibited with their statement as to employment is true, that under the contract the fee was contingent and that, in the event the suit was lost, he would get no fee, but have to pay personally the fees of any attorneys who assisted him and, in addition, pay all the expenses of the litigation and become personally responsible for any damages or damage suits, I think the fee of fifty per cent of the recovery, as stipulated for in the contract, very reasonable. If it were placed on a quantum meruit basis, looking to the work done, the results accomplished and the contingent liability assumed, I think one-half the recovery reasonable. In fixing the fee I have in mind, as the recovery, the entire estate and not the amount necessary to pay creditors.

Cross-Examination.

I understood the entire recovery to be $100,000. Think the attorney should get $50,000, looking to the work done, risk assumed and results accomplished. I think the entire estate of the bankrupt is the recovery and that the fraudulent bankrupt stands in no light be-

fore the court to raise any objection to the fee fixed.

I would not figure the amount of the creditors, in a thing of this kind, as cutting any figure. It is the amount of recovery, the work, to secure that, and the risks assumed in undertaking a litigation of this kind. By risks I mean getting out attachments and appointing a trustee over a man's property, agreeing to bear all the expenses incident to the lawsuit, and if he employed any additional lawyers, to pay them. I understood they did not actually incur any liability on the receivers and other bonds they made, but they incurred a risk.

R. B. C. HOWELL.

Direct Examination.

Lawyer at Nashville for 21 years. Have read the statements of Messrs. Jordan Stokes, Jr., J. R. West and R. H. Crockett of their services and the contract of employment. I think the contract provides for a reasonable fee especially in view of the fact that Mr. Stokes agreed to assume all the responsibility and agreed to pay all the expenses and bear all the burdens of the thing and released the trustee from any expenses of any kind, in the event they did not succeed in recovering anything. I understood Mr. Stokes was to make all cost bonds, receiver bonds, and bear all the expenses of the litigation. Assuming the same contract was executed but no percentum for fee stated therein, under same circumstances, I think it should be fifty per cent.

Cross-Examination.

Think the fact that the attorney agreed to bear all expenses, hold the trustee harmless and sign the bonds an important feature of the thing. I understood the Sedberry estate was $100,000. My idea is there is $100,000 involved in this litigation. I am predicating my idea of a fee on 50% of that amount. I understood the creditors were $28,000 to $30,000. I did not take into consideration the amount of the claims filed. That was not an element considered by me at all. I looked to the contract, the chances he took and results accomplished. I understand he has recovered $100,000. If a man had only $18,000 of creditors and lists no assets and it is afterwards discovered he has an estate of $500,000, I would not say what the attorney's fee should be. I don't think such is a similar case.

R. B. C. Howell Walter Stokes

"Q. You are just a $100,000 man and would go no further?

A. No larger.

Q. But you will say $50,000 on $100,000?

A. I will say 50% fee, bearing all the expenses and relieving the other fellow of all liability, regardless of the amount, 50% would be reasonable to me."

Re-Direct Examination.

"Q. Mr. Howell, would you have undertaken this case and performed the same services under the same conditions and circumstances that Mr. Jordan Stokes, Jr., and his associates performed them, for less than fifty per cent?

A. I would not, and I don't think I would have been game enough to have taken it in the beginning, like Mr. Stokes did."

WALTER STOKES.

Direct Examination.

Lawyer. Thirty-three years at Nashville Bar. Uncle of Jordan Stokes, Jr. Have read the statements of Messrs. Jordan Stokes, Jr., Jos. R. West and R. H. Crockett. Assuming the statements therein to be true and the terms of the contract with the trustee, that the fee was contingent, Mr. Stokes was to pay all expenses and court costs, that he was to indemnify and hold harmless the trustee from damage suits and all other losses of every kind, under those circumstances, I think 50% of the recovery a reasonable fee. Assuming the same facts to exist, but the contract did not state the percentum of the attorney's fee, all the other circumstances being the same, I think 50% would be a reasonable fee. By the recovery I mean the $100,000 and not merely the sum necessary to pay creditors.

"A. In damage suits, at the Nashville Bar, it has been customary, since I have been here, to contract for from one-third to one-half of the recovery on a contingent basis. To get one of those cases, investigate the evidence, try it in the Circuit Court, and get a verdict, thirty three and a third, or fifty per cent is a very different proposition from what he was up against in this case. I think a fee of fifty per cent, under the circumstances stated in the deposition of these gentlemen, would be reasonable compensation, and in line with what has been

Walter Stokes

charged and collected here at the Nashville Bar, under similar circumstances.

Q. Now you speak of fifty per cent of the recovery in this case. What do you mean by the recovery, only such sum as is necessary to pay the creditors, or such sum as was recovered for the Bankruptcy Court?

A. I meant what sum was recovered, the total amount, which I understood to be about one hundred thousand dollars."

Cross-Examination.

I understand the amount involved in this case is $100,000. That is the recovery. I do not know the amount of the claims filed against the bankrupt. The attorney was employed here on a contingent basis, the trustee had nothing, and he undertook to incur all the expenses, make the necessary bonds and hold the trustee harmless and in view of this and the work done and the results accomplished, I think he ought to have a fee of 50%.

"Q. Your theory is, as I understand, as there was one hundred thousand dollars brought into the Court, that the fee ought to based on that, and not on the amount of the bankruptcy claims,—

A. Let me explain please. When Jordan made this contract the trustee had nothing, and as these statements show, this man had fraudulently covered up all of his property, and the creditors would have and the estate would not have given them a cent, and then he was employed and undertook to incur all of the expenses, make the necessary bonds, and hold the trustee harmless; to investigate the facts, which was done and which we all know must be most difficult and require great time, and great skill, and then he filed that Bill, and the winning of that case, and bringing in this large amount into the Court, when absolutely nothing was in sight when he was employed, I think a lawyer should not be beat down below fifty per cent for such extraordinary work. In fact, if the Trustee had come to me and made me a proposition like Jordan's contract, I would have thought he was crazy, and I would not have considered it for a moment."

I did not know that at the time these attorneys filed this bill at Franklin, there was another bill pending in chancery there attacking this same conveyance as fraudulent.

Frank A. Berry

FRANK A. BERRY.

Direct Examination.

Have been a member of the Nashville Bar since 1909. Am a graduate of Harvard Law School, and am now a member of the firm of Smith & Berry. I have read the statement of Messrs. Stokes and associates and assuming the facts therein stated to be true, I think their contract with the trustee provides for a reasonable compensation.

"Q. Let us assume that the contract did not specify for any percentum of fee, and that the services rendered were done under the same circumstances and conditions, what would you say would be a reasonable fee upon a quantum meruit basis?

A. I would say not less than fifty per cent, and I would base part of that on the unreasonable risk and the expenses that the lawyers have gone to in that case.

Q. Do you mean fifty per cent of the recovery?

A. In the case of bankruptcy, such as this, I think the estate determines the amount involved, and I think the entire estate, being in the hands of the Trustee, and under the administration of the Bankruptcy Court, I would mean that fifty per cent of the amount of the recovery, and not governed by the amount of claims, for there might not be but one claim filed and yet the expenses and the work and risk of Mr. Stokes would have been the same.

Q. Assuming that the property recovered by Mr. Stokes, and associates in this case, would amount to one hundred thousand dollars, would you think a fee of fifty thousand dollars, or fifty per cent, would be reasonable?

A. Yes, I would and for the reason just given, for the larger the amount of the recovery, the larger the responsibility, and necessarily, the harder the case would be fought."

I would give the lawyer fifty per cent of the recovery. I think the estate determines the amount involved. I would not be governed by the amount of the claims filed against the bankrupt.

In estimating this fee I took into consideration the fact that Mr. Stokes obligated himself to make all cost bonds, injunction bonds, receivers bonds, and bear all the expenses of the litigation. I have read his statement and I am taking all that into consideration.

Frank A. Berry R. T. Smith H. A. Luck

Cross-Examination.

I think the factor of bearing all expenses, making bonds, holding the trustee harmless, should figure perhaps as one-fourth to one-third of the amount I allow him for a fee. I didn't hear what the amount of claims filed against the bankrupt were. Did not consider that.

R. T. SMITH.

Direct Examination.

I am an attorney at the Nashville Bar and have practiced there since 1892. I have read the statement of Mr. Jordan Stokes, Jr., and associate counsel. Assuming the facts stated by them to be true, in view of their contract, I think the same provides for a reasonable fee. Assuming there was nothing in their contract as to a per centum for their fee, under the conditions stated therein, I think 50% a reasonable fee. Supposing the amount recovered by them was $100,000, I think $50,000 would be a reasonable fee.

Cross-Examination.

I understood he made himself responsible for everything and did an enormous amount of work. I understood from his statement that he discovered everything. If a previous bill had been filed at Franklin, attacking this Sedberry deed, I think that should have something to do with his fee, how much I could not say; getting the proof was the big thing, and in addition to that, he was paying all the expenses and making himself liable for everything.

H. A. LUCK.

Direct Examination:

Attorney at the Nashville Bar since 1895. I have read the statements of Mr. Jordan Stokes, Jr., Mr. Jos. R. West, and Mr. R. H. Crockett, filed in this cause, with respect to services performed by them, and I have also made a casual examination of the copies of the records in the Bankrupt Court and the Chancery Court at Franklin, and assuming the statements to be true, and under the contract made by Mr. Stokes with the trustee, that the fee was contingent, that Mr. Stokes was obligated to

pay all costs and expenses, and was obligated to save the trustee harmless from any damage suits or other like actions, I think the fee stipulated in the contract very reasonable for the services proposed and done. Assuming all these facts to be true, but the contract silent as to his per centum, I think 50% a reasonable fee. I consider the recovery the amount of the estate, irrespective of the debts scheduled. I have sat as Special Judge of the Courts, and tried numerous cases, and I am also, U. S. Commissioner for this end, of the Middle District of Tennessee.

Cross-Examination:

I understood he had recovered for the trustee $40,000 or $50,000 and that the debts of the bankrupt were approximately $18,000. Under the facts Mr. Stokes ought to have half of the forty or fifty thousand for his fee. I would give the same fee without the obligations and liabilities he assumed. In his place, I would not have assumed them. I understood the case only went through one court. A lawyer is not always entitled to the same fee, where the case only goes through one court and is not appealed, but usually we try to regulate fees by the results accomplished as well as the labor performed. I did not know a suit had been previously filed in Chancery at Franklin, attacking this conveyance. If I had known it, I do not know that it would have altered my opinion.

Redirect Examination:

I think 50% of the amount of the recovery should be allowed, whether the recovery is $75,000, or whatever may be the amount of the recovery—whether large or small—I think 50% reasonable compensation.

PROOF OFFERED FOR THE SEDBERRYS.

J. C. EGGLESTON.

Direct Examination

I am a member of the Franklin Bar. Have practiced law since 1885. Was attorney for J. H. Sedberry and filed his petition and schedules in this bankruptcy case. I prepared his schedules from the data he furnished me. They were filed in August, 1917. Before that a suit had been brought in Chancery at Franklin by a creditor of Sed-

berry named Timmons, attacking this conveyance of this farm to his wife in 1902. I was Counsel for him in that Timmons suit and filed a demurrer to that bill. I offer the original papers in that suit in evidence. I represented Mr. Sedberry in his bankruptcy case and later on associated Mr. Avery Handly with me. I was present at the trial of Watkins, Trustee v. Sedberry, in Chancery at Franklin. The case was concluded about five o'clock in the afternoon of the second day; that is the way I recall it. The Chancellor did not then decide the case but came back later to Franklin and did so. I was present when he announced his decision. It was oral and in a very few words. Only Mr. Crockett and I were present. The Chancellor furnished no memoranda for a decree.

Mr. Stokes afterwards drew the decree and brought it out to Franklin and showed it to me. There was also present on this occasion, Messrs. West, Crockett and Handly. The decree, as drawn by Mr. Stokes, sustained every single allegation he had made in his bill and set aside the deed completely. I called his attention to the fact that the decree called for an accounting by the Williamson County Bank, whereas the Chancellor had stated no accounting would be required of it, that the transactions with Sedberry were all right and correct.

The decree was subsequently re-drawn by Mr. Stokes and in this second draft a clause was inserted by which we agreed not to appeal in consideration of Sedberry, his wife and children paying off the entire amount of the debt, costs and attorney's fee. We were to raise the money to do this by a mortgage on the farm in which mortgage the trustee was to join. The matter was discussed at some length. Mr. Stokes for the Broadway National Bank also promised to refile the bank's claim against Sedberry for simply the money actually borrowed by Sedberry, and interest.

We agreed in the decree to vest title to everything in the trustee, who was to join the Sedberrys in a mortgage as aforesaid. Mr. Handly then suggested we had better agree on Mr. Stokes' fee. Mr. Stokes said, "No, that will be settled by the bankruptcy court, or that is exclusively within the jurisdiction of the bankruptcy court," and declined to discuss the amount of his fee or say anything further about it than it was a matter to be settled by the bankruptcy court.

Neither Mr. Handly nor I knew at the time we signed the decree that Mr. Stokes had a contract with the trustee in bankruptcy about his fee and were greatly surprised to learn afterwards of it; felt we had been placed

in an unpleasant attitude with our client, as we had advised him to sign the decree and make the settlement. I never dreamed of a fee of over $3000, or $40000 or $5000 at the outside.

Mr. Handly was not present in Franklin at our second interview when the decree, as redrafted, was signed. It was agreed we were to have 60 days to raise the money by mortgage on the farm.

At the time the decree, as redrafted, was presented to me at Franklin, then were present Messrs. Stokes, West and Crockett and I. Mr. Handly was not then present. Mr. Handly wrote me a letter stating he had seen the decree as redrafted. The decree was then entered.

Sometime the middle or last of October, 1919, we met in Nashville to discuss and fix on Mr. Stokes' fee—the referee wanted the estate closed—that was when Mr. Handly and I first learned of Mr. Stokes' contract and his claim thereunder. He said his recovery was $98,000 and his fee was $49,000. I could not think he was serious about it. We met again later and they said they would take $40,000. First I heard of his contract was about sixty days or more after the decree at Franklin had been signed. We never offered to pay Mr. Stokes $10,000, or any other amount, so far as I am concerned. We were so far apart we never made any offer to try to settle.

When we learned of Mr. Stokes' demands and his contract, I wrote Sedberry, who had moved to Texerkana, Ark. He later came back to Tennessee and employed Mr. K. T. McConnico of the Nashville Bar, who got from Mr. Stokes, a tentative agreement with regard to his contract with the trustee, which agreement is in the record. The agreement to do so was in writing. Mr. Handly sent it out to me. I signed it for Sedberry and in a few days delivered it back to Handly. Then, shortly after that, in December, 1919, we filed a petition before the Referee asking him to fix Stokes' fee. We just decided we would leave it to the court to settle and dispose of, as we could not agree with Mr. Stokes.

I am entirely familiar with the work Mr. Stokes did and my idea is that if he is to be paid a fee, that $5,000.00 would be reasonable and liberal for the work he has done. The reason I say this is because a bill had already been filed to set aside the Sedberry deed as fraudulent; the examination had already been made of the bankrupt, his wife and son, and this evidence was merely refiled in the case at Franklin; in addition, Mr. Stokes took two or three other depositions. All done by agreement and at convenience of Counsel. We took two depositions on our

side. That was all the proof. We were about two days trying the case.

Assuming that Mr. Stokes was working on a contingent basis, and that he accomplished the results he set out and that there had been $28,000 of unsecured claims against the bankrupt, I think $5000 would be a liberal fee for him. If the claims presented were only $18,000, I would still pay him about the same, but I am not taking into consideration, in fixing a fee, such things as liability on bonds—I am just figuring on the professional work he did, and not at all on a contingent basis. As a matter of fact he incurred no liability and suffered no loss on any bond he signed. I do not recall a case of the same magnitude where more than $5000 was paid, that I know of; there may have been.

Cross-Examination:

The original bill in the Timmons suit at Franklin, was filed in May, 1917, and the demurrer thereto, in June, 1917. No proof had been taken in the Timmons suit when Stokes filed his bill—it was standing on demurrer. The demurrer has never been disposed of. The only assistance that Mr. Stokes could have secured from the Timmons record, if anything, was simply the allegations which Mr. Timmons made in his bill. The first objection I had to the decree, as first drawn by Mr. Stokes, was that it called for an accounting from the Williamson County Bank. There was no trouble about eliminating that. Soon after Mr. Stokes had read his decree over and I had called his attention to the bank matter, we at once took up the matter of the settlement of the lawsuit and we discussed that. The first decree provided for the Receivers of the Chancery Court to sell the farm and property, and Mr. Handly suggested that the title be vested in the Trustee in Bankruptcy, to save two commissions, in case of a sale. I don't think there was anything further said about the decree as drawn. The Chancellor did not determine anything scarcely in his announcement, but just simply said, "I think these debts ought to be paid, I don't think these people ought to lose their money," and he probably said a few words, I don't recall, and stopped. He also added that his conclusion, as announced, was not in accord with the opinion he would have delivered, when he first took the case under advisement. I then asked him about the Bank matter, and he said he would not call on the Bank for an account. Then Mr. Crockett arose and asked about the turnip seed and he said that the claim with reference to the turnip seed was sustained. He did

not say in so many words that he held the deed fraudulent; said the debts should be paid and the deed set aside to that extent.

After we had the understanding that we did subsequently with Mr. Stokes, we were perfectly willing for the decree to go down just in the form Stokes had written it, because we thought the whole matter would be settled and the debts would all be paid; and it was a matter of indifference to us what the decree provided, as we expected to pay it all off anyway. The Chancellor never saw the decree.

"Q. Who won the lawsuit before the Chancellor, the complainant or the defendant.

A. Mr. Stokes won the lawsuit, he and his associates; the complainant won the lawsuit."

"Q. And you knew Mr. Stokes had gained his lawsuit?

A. Yes, sir.

Q. And gained the allegations he had made in his bill?

A. Yes, sir."

We just let the decree go down as drawn, without objection, as we expected to raise this money and pay the thing off and wind it up. We filed no petition or pleading to vacate the decree and never expected to, but expected to carry it out like we agreed to. Mr. Stokes kindly agreed to wait and do nothing in my absence about selling the farm while I went West with my daughter. It was never contemplated the place would be sold, as I understood it. We were to raise the money on a mortgage. I knew the trustee could not mortgage the farm without an order of court. We took it the Court would have to ratify any agreement we made.

Redirect Examination:

The first draft of a decree Mr. Stokes brought to Franklin had no clause in it about neither side appealing. That was put in the redrafted decree after our first conference.

P. E. COX.

Direct Examination:

Am a lawyer at Franklin. Have been practicing law there for twenty-three years. Also practice some at the Nashville Bar. I have read over the statement of Mr.

P. E. Cox

Jordan Stokes, Jr., as to his services in case of Watkins, Trustee v. Sedberry in the Chancery Court at Franklin. Assuming that the facts he states are true and that the debts of the bankrupt were $30,000, I think a reasonable fee to him would be $5000. If, as a fact, the debts were only $18,000 to $20,000 I would make some reduction in the fee. My idea of the recovery is the amount necessary to pay creditors and not the amount of the Sedberry estate. In fixing the amount of the fee, I considered creditors to be between $28,000 and $30,000.

Cross-Examination:

If the recovery was $100,000 I think the fee should be at least $10,000. The largest fee I ever got at the Franklin Bar was $1000.00. I have had cases involving a $100,000. I did not say I charged a $1000.00 in that case. I said I never collected a fee of over $1000.00 at the Franklin Bar. I have taken cases on a contingent basis—a few—personal injury suits. One in which I charged 40% of the recovery—but that case was carried through all the courts. The usual and customary charge at the Franklin Bar on personal injury suits, on a contingent basis, is 33⅓%.

Redirect Examination:

I don't remember any provision in our Bar fee bill for contingent fees in the Chancery Court—that applies to damage suits for personal injuries in the Circuit Court on a contingent basis. We have no provision in our fee bill for setting aside a fraudulent conveyance in the Chancery Court. We have a provision for litigated cases in chancery. In fixing Mr. Stokes' fee at $5000, I considered the time and labor he consumed in the prosecution of the work—I understood they had worked on it off and on for two years, investigation and taking proof, etc., trying to find out what he wanted to prove; drawing his careful bill; subsequent pleadings and steps. Ferry Seed Co., matter, investigating the law applicable, the time of the actual trial, and taking it all, I thought $5000 a reasonable fee on the facts as first stated by him. In fixing Mr. Stokes' fee at $5000, I did not take into consideration that he took the case on a contingent basis.

AVERY HANDLY.

It was stipulated and agreed by the parties that the affidavit of Avery Handly made herein on February 25, 1920, and filed in this case, should be treated and considered as his direct examination. Said affidavit reads as follows:

AVERY HANDLY.

Direct Examination:

Personally appeared before me, Avery Handly, who makes oath in due form of law, and states as follows:

I was called in this bankruptcy case after adjudication and the filing of bankrupt's schedules, at the time when the bankrupt was being examined by Mr. Jordan Stokes, Jr., representing certain creditors; and thereafter was associated with Judge J. C. Eggleston in representing the bankrupt and his wife and chidren who had been made defendants in the Chancery cause at Franklin, when the farm referred to was sought to be subjected to the debts of the bankrupt, and the deed conveying the property to said defendants was attacked as a fraudulent conveyance, and title to said propery sought to be decreed in the bankrupt.

I was of the personal opinion that said bankrupt had a vested interest in said farm, contingent as to amount, in that, a beneficial interest was created for any other children that might be thereafter born to said bankrupt and his wife, and that the trust created by said deed was an active one; but, however, the duly recorded instrument speaks for itself, having been of record since 1902, and long prior to the creation of any of the debts now owed by the bankrupt, and scheduled and filed in this case. I was also confident that the wife and children of the bankrupt had a good title to their respective interest, even had there been any of the debts scheduled in this bankruptcy case existing at the time the deed was executed and recorded, or the bankrupt had then been insolvent, and as to them a fraudulent conveyance, because of the second section of our statute of limitations as to the bringing of an action to recover real estate when the same had been held under a recorded deed for more than seven years before suit be brought, which we pleaded for said wife and children in said trustee's chancery suit.

I may add that one of our adversaries in his argument before the Chancellor in said chancery suit, stressed that

"at least the trustee had the right to recover a one-fifth interest in said farm."

It is now unnecessary for a further reference to these questions, since there was an agreement between the respective solicitors in the chancery suit that said defendants would not appeal from the Chancellor's decision, and the bankruptcy case be settled by the payment of the debts of the bankrupt, the costs of the latter proceedings, including a reasonable attorneys' fee for the solicitors representing the trustee herein in said chancery suit.

I was invited to go with Mr. Stokes and Mr. West to Franklin, in Mr. Stokes' automobile, when it was stated that a decree had been drafted, and submitted to us for approval, I accepted, and we all met in Judge Eggleston's office, at Franklin. The decree was very lengthly, and contained a very fulsome recitations of the facts of the case, as considered by our adversaries; and Judge Eggleston when the decree was first read over explained that the Chancellor in delivering his opinion in the case, which he and Mr. Crockett heard, announced that the Williamson County Bank paid out, and had dealt in good faith, with the moneys and transactions with respect to this case, and that he would not grant a recovery against it; and consequently the reference ordered as to these transactions was beyond and broader than the Chancellor's announced decision.

Nor had there been any threat or intimation at that conference that the bankrupt was going to be prosecuted criminally or subjected to contempt proceedings.

Likewise, I personally had called attention to the provision in the decree as drafted directing a sale of the farm by the Chancery receivers, as being a chance for two commissions on the sale, the commissions of the receivers for a sale, and then the fees as allowed by the Bankruptcy Act to the trustee on the funds handled by him, when, were he to make a sale, his commissions would be no greater, etc.

These matters were observations, and not consideration for the settlement of the case, as at that meeting afterward effected.

Judge Eggleston in the course of these observations and the first intimation of a desire for the matter to be closed, remarked that he considered that it was probable that at most, upon appeal, that the bankrupt's interest, which, because of the age of the bankrupt and his wife, and the improbability of other children being born to them—though the law recognized such a possibility so long as they lived—was practically estimated as a fifth,

and said farm had enhanced in value, in order to save further time and expense, as this interest would be about the total of the bankrupt's indebtedness, it might be possible to get our clients, all the defendants owning an interest in said farm, to not appeal, and let the bankruptcy case be settled. And then it was that Judge Eggleston stated that the bankrupt and his family would be more readily inclined to agree to this, if the Broadway National Bank would reduce its claim to the actual amount of money it had loaned the bankrupt. At this juncture, it was decided that we might then talk the matter over with Mr. Sedberry, and it would be better if Messrs. Stokes, West and Crockett would retire; and thereupon I went to the hotel for Mr. Sedberry, and our adversary counsel went to the office of Mr. Crockett.

Mr. Stokes, with respect to this Bank's claim, which he represented, stated that while he could only make them a gentleman's agreement, and would have to submit the matter to Mr. Potter, the President of the Bank, he could assure us that if the settlement went through or was agreed to, he could get the Bank's claim reduced to the money actually loaned Mr. Sedberry, interest thereon, and the amounts it had expended in seeking to collect the debt, since Mr. Potter largely left the matter to him.

As the bankrupt had actually borrowed from this bank $2500, less discount, and a claim had been filed for some $7100.00, naturally this rankled.

Mr. Stokes and his associates returned before our conference with Mr. Sedberry had terminated; and Mr. Stokes announced that he was in a hurry to get back to town.

In our conference that day with these gentlemen, prior to consulting with Mr. Sedberry about the proposed settlement of the entire matter, and after Judge Eggleston had intimated a possibility of settlement, ways and means were discussed as to effectually carrying it out. Chiefly the means of raising the money and the amount. Effort was made by us to have the entire amount agreed upon, including the item of attorneys' fees for representing the trustee, and Mr. Stokes said that this was an exclusive matter for the Court of Bankruptcy to pass upon, that he would not agree on this, and would leave that question for the Court of Bankruptcy. No mention was made of any contract that he had with the trustee, nor did we or the bankrupt know that such existed. It occurred to us that one would entertain as high, or higher opinion, of the worth of his own services; and, as the Court, being a lawyer first, would be bettter able to pass upon this ques-

tion, and the probabilities were that we could not agree on this score, it was readily agreed to leave this question to the Court to fix.

It was contemplated and discussed as to the manner of raising the necessary money for the debts to be discharged, the costs and expenses paid, and the bankruptcy case dismissed; the amount then in the hands of receivers of the State Court was considered, and that as to the balance, a mortgage could be made on the farm; and that to effect this, so as to make a good title as security for the loan, as the bankruptcy proceedings were still pending, that the trustee could join with the defendants, upon proper order of the Court of Bankruptcy, in making a mortgage that would be acceptable in negotiating a loan.

And that the decree in the Chancery case would provide, accordingly for the divesting and vesting of title in the trustee.

The debts were to be properly arrived at, including the bank debt in question, and the funds in the hands of the State Court receivers transferred to the trustee, for a ten partial dividend, and thereafter the balance necessary to finally settle the bankruptcy proceedings could be determined, and the only question outside of the bank's debt, and as it has developed, the chief question was the fixing of the attorney's fee.

Complaint was made by us as to the unnecessary insistence of embodying in the decree the recovery as against D. M. Ferry & Sons, since that only tended, by the enforcement of such decree in this respect, to increase the liabilities of the bankrupt, as the bankrupt did not repudiate his contract with Ferry, but the same had been done by the Trustee, and the farm was ample security for the payment of all the debts of the bankrupt, for which purpose the wife and children were willing to waive their interest.

At this meeting it was agreed that the defendants would waive their right of appeal, and undertake the satisfaction of the bankrupt's debts and dismissal of the bankruptcy proceedings, upon these conditions; and the consent decree was entered, thereafter.

I was shown the redraft, but did not go back to Franklin with Mr. Stokes and associates, and told them that I would not "OK" the decree, until after passed on by Judge Eggleston, the senior counsel. I saw the decree the day before it was taken to him, and then wrote the Judge that while in my opinion there was still the unnecessary recitations of the "facts," and there was still embodied the decree against D. M. Ferry, still as we had

agreed to end the case at our former meeting, in the manner as herein stated, there was no further reason to quibble.

I do not know what occurred in Franklin when the decree was finally signed. But I do know that the terms of the settlement of the whole matter were agreed upon when I was there, at the first conference when the decree was first submitted.

Thereafter, upon the Referee in Bankruptcy stating that on the question of the attorneys' fees he wanted us to try to get together, without leaving to him the fixing of the fee, several conferences were had in an effort to settle the question, and there were further delays on that account.

In these later conferences, for the first time was mention made of the contract with the trustee for a fixed fee of fifty per cent, and to our surprise, as its existence was unknown. This was communicated to the bankrupt now living in Texas, and to him a matter of great surprise.

Both the bankrupt and at different times his two boys came to Tennessee, and Mr. McConnico was consulted about getting a modification of the consent chancery decree, because of the existence of this contract, and insistence by Mr. Stokes and his associates that their fee should be allowed in accordance therewith.

The Sedberrys were still willing to abide by the agreement for the Court to fix these fees, and when Mr. McConnico showed the embarrassment that was occasioned by the insistence upon the contract, and Mr. Stokes and associates agreed to withdraw from their position in their claims for fees based on the contract, it was our purpose to submit the matter to the Court, in accordance with out understanding for a final settlement of the whole proceedings.

This stipulation entered into by Mr. Stokes and Mr. McConnico as to withdrawal from claim on the contingent fee contract was forwarded by me to Judge Eggleston, and both copies were given me. Judge Eggleston after communicating with our clients himself signed same, and in the early part of December, 1919, they were returned to me. I had them in my office, and called Mr. Stokes' office when I was told he was out, and I learned that he was then sick, I attached no importance to the fact that his copy was not properly delivered to him, in fact, overlooked same then. Nothing was said about prompt advices of their return being given him, when he spoke to me about it, and I told him that they had been forwarded to the Sedberrys by Judge Eggleston. Like Mr. Mc-

Connico, as this was the only point over which the Sedberrys were exercised, and Mr. Stokes and associates had so readily agreed to stipulate about same, which was the extent of Mr. McConnico's interest, and he had closed this feature and relieved the embarrassment, having authority to so act, I knew that there would be no question made by the Sedberrys about the making of this stipulation; and I considered that this was ended.

The petition filed by the Sedberrys in this cause praying for the carrying out of the trustee's and their agreement as to the final disposition of the bankruptcy proceedings, was done in good faith upon the understanding that this was necessary for the effectual carrying out of such agreement, since it was impossible to agree on the question of attorneys' fee; and was not in any way an effort to take any advantage as to this stipulation, or to do, or seek to have done, anything not in accord with it. There was no necessity of mentioning such stipulation in this petition, as it was agreed in such stipulation that the contract as to fee could be looked to for all evidential purposes, etc. However, I overlooked returning to Mr. Stokes copy at the time the Sedberrys filed the petition herein in December, 1919; and when, on the morning of the 8th of January, I was told by Mr. McConnico of the letter of January 7, 1920 (Exhibit "C" to answer of the trustee. filed January 10, 1920), I that day told Mr. Stokes that the copy was in my office, and I had overlooked giving same to him, and that I was surprised that he took exception to the fact that no mention of it had been made in the petition, which I thought unnecessary; and on the next day I again, on meeting Mr. Stokes and Mr. West, in the hall, outside Mr. West's office at the courthouse, explained the circumstance.

There was no notice to me that there was any verbal condition, or otherwise, that unless the Sedberrys promptly notified Mr. Stokes and associates of their ratification of what Mr. McConnico had effectuated by this stipulation, which he had authority to make and did at the time close, or there was failure to return their copy, which occurred through my oversight as herein stated, there was a right to withdraw from same reserved to Mr. Stokes and associates.

The petition of the Sedberrys filed herein, in December, 1919, was in furtherance of the agreement as to the dismissal of said bankruptcy proceedings, and the stipulation as to the withdrawal of the contingent fee contract was an incident to that settlement agreement, a clearing up of a question that developed afterward, and not a part

of the agreement as to the dismissal and settlement of the bankruptcy case, since, as has developed, the question of attorneys' fee to be fixed by the Court of Bankruptcy is the main controversy, practically the only one—except for the bank's debt, the only question.

Reference has been made as to amounts tentatively offered by us in an effort to settle the question of fee, in our desire to comply with the Court's request that same be agreed upon. No offer of $10,000.00 was ever made. At one time, in an effort to compromise same, on my own initiative, and the question of attorneys' fee is disagreeable for lawyers to make a controversy about, I stated that the Sedberrys, in order to get the case settled without further delay and expense, might be prevailed on to give $6000.00 or $7000.00; but this was made only as a matter of compromise and not what I consider as a matter of evidential or probative value, or now referred to as my opinion as to what the services rendered were reasonably worth. On this score I was asked by Mr. Stokes, and I readily told him that in my opinion $5000.00 was the maximum, and such is my opinion being conversant with the whole litigation which ended in the Chancery Court.

Cross-Examination.

I was called in by Judge Eggleston as associate counsel about the time the Sedberrys were examined before the Referee. I thought Mr. Sedberry had a vested interest in the farm from the very face of the deed. The wife, Sedberry, three living children and such others as might be born were the beneficiaries under the deed. Thought, for instance, he had about a one-fifth interest. Women do not often bear children after fifty. I knew he had scheduled no assets. I suggested to Judge Eggleston his schedules should be so amended as to show this interest in the farm. It was never done, since Judge Eggleston, as senior counsel, did not agree with me and I deferred to his view. Mr. Stokes first started the fight on it and there was no hiding of assets, it was under the deed. We also thought we could defeat Watkins' suit because of the Statute of Limitations, as to the wife and children's interest. That was one of our defenses—briefed and argued. We fought the trustee's whole claim from start to finish. I thought Sedberry had a vested interest, under the deed, that could be reached, but contingent as to amount. So told Judge Eggleston and Sedberry before the trial. I deferred to Judge Eggleston's contrary view, as he was senior counsel. The parties

took proof off and on for two years. Case was continued several times. All done by agreement.

The first I ever heard of any threat to prosecute Sedberry criminally under Bankruptcy Act was on the return trip from Franklin, after the agreement was made about the final decree, when I said, "this does not look like any settlement to me at all." I wanted to appeal this case, and I said: "This is just a give up to you, I don't see any consideration to us at all."

My humble view of the Chancellor's opinion is that it would never have been sustained on appeal; that Mrs. Sedberry and the three children had a vested interest and would have won out.

When we met at Franklin, the first conference about the decree, Judge Eggleston said: "This man owes these debts and it may be that he has a fifth interest, and that will about pay what his debts are." I never heard the Chancellor decide anything. Don't know what he held. This was said at our first meeting with Messrs. Stokes, West and Crockett after the decision. We then went out and got Sedberry and talked to him and the Bank finally agreed to take what they had actually loaned Sedberry, with lawful interest; they had proved a claim for $7100.00, when Sedberry had only actually borrowed and received $2500.00, less the discount. The Bank was to put in its claim at about $5500.00. Then we went back into a conference. While I thought the Chancellor decided the case correctly, it was not as to the way the decree was drawn. He decided the case in favor of the complainants.

Aside from the scaling down of the Broadway Bank debt, we wanted to pay Sedberry's debts, save expense of further litigation, we knew or felt his one-fifth interest would be sold; and to get the matter settled, without appeal, were the reasons we agreed not to appeal. The agreement was: The actual amount, with interest, due the Broadway Bank was to be arrived at; all the other debts likewise; expenses of case; title was to be vested in the trustee in bankruptcy and he, joined by the Sedberrys, under order of court, was to raise enough money on mortgage to pay the debts and costs and the proceedings then be dismissed. The attorneys fee was not agreed on or its amount—at that conference. We left town with a pretty distinct understanding as to how the decree was to be drawn.

"Q. But the Chancellor decided the case in favor of the complainant?

A. He certainly did, in toto."

He (Mr. Stokes) wanted the decree drawn very fully,

even to the Ferry Seed Company, that I didn't think ought to be in it. Mr. Stokes said he did not care whether we appealed the case or not. We came back to Nashville. Stokes redrafted the decree and it was presented to me. I O. K'd it and wrote Judge Eggleston my views about it, but as we were settling the matter, I let it go. I did not see the necessity for the long decree. For instance he had in it about existing and subsequent creditors. The Chancellor never so found. Just let it go, however, because we thought we were settling the case. I am talking about creditors in 1902 when the deed was executed. The decree, as entered, does say both existing and subsequent creditors. So we signed the decree, leaving open the attorneys fee to be determined by the bankruptcy court. Mr. Stokes said his fee was a matter for the determination of the bankruptcy court. He said "I will not agree on it, I will leave that to the Court."

I don't know what took place at the second conference at Franklin. I was not there.

Afterwards when Mr. Stokes told us of his contract with the trustee, Mr. Sedberry employed Mr. McConnico. Mr. McConnico presented to me the paper or agreement he secured from Mr. Stokes and I forwarded it to Judge Eggleston. It was subsequently returned to me and I forgot to give it to Mr. Stokes and he knew nothing about its return when he wrote his letter of January 7, 1920, to Mr. McConnico, as follows:

(See Exhibit "C" to Answer of Thomas G. Watkins, Trustee, to Petition filed by Sedberrys, to fix Counsel fees, p. 86 of this transcript.)

I did not know there was any contention, however, about it. I thought it was passed on and agreed to and they would not insist on this contract. It was my negligence in not advising Stokes I had the paper back ready for him and signed. Mr. McConnico had told Mr. Stokes at the time: "I am sure I have authority to sign for the Sedberrys and I now sign it, but I want it sent to the Sedberrys to see if they approve." They did approve and I forgot to tell Mr. Stokes.

"Q. Now, Mr. Handly, Mr. McConnico presented that matter to you after he had negotiated with Mr. Stokes and his associates, and you forwarded that agreement to Judge Eggleston, your associate and never up until after the filing of the petition in this case by the Sedberrys, for the settlement of this fee of Mr. Stokes and his associates, did you communicate the fact to Mr. Stokes that this tentative agreement or understanding between you and Mr. McConnico had been agreed upon or accepted by the Sedberrys. That is true.

Avery Handly Thos. G. Kittrell

A. That is true. I never delivered him the copy, but I didn't construe it the same way Mr. Stokes considered it. I considered it closed and not a tentative agreement.

Q. But as far as Mr. Stokes is concerned—

A. From his construction, yes, it was a tentative agreement, yes, that is true."

We did not mention anything about the McConnico stipulation in the petition we filed in December 1919—did not think it necessary.

My opinion is that Mr. Stokes' fee at a maximum should not exceed $5000.00. I put this on a quantum meruit basis. I eliminated the contract in my estimate.

Redirect Examination.

I said $5000 and did so considering the contingency to a limited extent. The reason the litigation lasted for two years it was during the war and lawyers and courts were busy with war work, questionnaires, exemption boards, etc.

Another reason we signed the decree at Franklin was this large and valuable farm was in the hands of the receivers of the Chancery court; had been for two years; and we wanted to restore its possession to the Sedberrys.

Between January 7th, 1920, and the filing of the Stokes answer and cross-bill herein on January 10, 1920, I told both Mr. Stokes and Mr. West I had the McConnico stipulation on my desk, properly signed, and offered to deliver it to them and he said he would let me know whether he was going to insist on his contract with the trustee or not.

THOS. G. KITTRELL.

Direct Examination.

I have been a lawyer at Nashville since 1896. I have read the statement of services filed by Mr. Jordan Stokes, Jr., in *Watkins, Trustee*, v. *Sedberry*. Taking the facts therein stated to be true and putting his fee on a quantum meruit basis and assuming the unsecured creditors of Sedberry were about $18,000, I should say his fee ought to be from twenty to twenty-five per cent of that amount. If the claims were about $28,000, then the fee should be about 20% of the claims.

Cross-examination.

I took into consideration in fixing the fee that the farm, stock and crops were said to be worth about $100,-

000. I don't understand Mr. Stokes' fee, under the law, is a claim against the bankrupt's estate. I understand such to be those in existence at the time of filing the petition in bankruptcy. I suppose his fee would be an item of the costs of the case. It is preferred as a cost charge above the claims of creditors and before they are paid.

R. L. PARRISH.

Direct Examination.

Am a member of the Nashville Bar. Admitted to practice in 1893. Have practiced here since, with exception of five or six years when I was in ill health. I have read Mr. Jordan Stokes, Jr.'s statement of his services. I think 25% of the recovery would be a reasonable fee to him. I understood the creditors from one viewpoint were $18,000 and from another about $28,000. In either event I would think 25% of the recovery a proper fee. I include the claim of $1100.00 he makes for expenses as part of the 25% fee allowed, as part of his professional services. If that is excluded, his fee should be reduced proportionately.

Cross-examination.

I am not now engaged in active practice. Have just retired. Have been retiring from practice for the past few years. I have recently accepted the Recordership of The Shriners, which takes practically all my time. This is the reason I have retired. I read Mr. Stokes' contract with the Trustee. Understand under it he was to get 50% of recovery. Also recall he was to do all the work and pay all expenses and costs. I predicated my answer upon my usual charges in matters of that kind, that embraces stenographers' fees and expenses that I might incur and my answer was based upon my own services rather than upon Mr. Stokes' contract. I understood the deed attacked was made many years ago. I realized the difficulty of getting proof and was guided as to what had been done by Mr. Stokes' statement. I did not go into all the details.

"Q. Do you realize how long that trust had been created before the bill had been filed by Mr. Stokes to have it set aside?

A. No, sir; I paid no particular attention to that.

Q. Do you recall the law relating to spendthrift trusts, and how they may or may not be set aside?

R. L. Parrish Jordan Stokes, Jr.

A. No, I do not think I do.

Q. Do you recall the difficulty attending the making of proof under the decisions of the Courts, the Courts of Tennessee, by which spendthrift trusts may or may not be set aside?

A. I was rather guided by Mr. Stokes' statement to the effect that the matter had been brought to a conclusion in the lower court, that no appeal was prayed, and I think I predicated my opinion on that, rather than upon a knowledge of the facts as they may have been brought out in the Chancery Court, or the law governing those facts.

Q. So that, then, you did not particularly take into consideration the nature of the issues of fact and of law involved in the Chancery suit at Franklin, together with the attendant difficulties of making proof in that case, the length of time the alleged trust had been created, the opposition thereto, and things of that kind were not really considered by you in estimating the fee?

A. Not in detail; no, sir."

Redirect Examination.

I assumed Mr. Stokes' statement to be true of what he had done.

STOKES PROOF IN REBUTTAL.

JORDAN STOKES, JR. (Recalled).

Direct Examination.

"A. It did not. I would like to make this statement. That was a suit filed by T. J. Timmons, who had secured a judgment against Sedberry and as a judgment creditor, he was filing a bill seeking to subject a one-fifth interest in the farm, title to which was held in Z. C. Sedberry, Trustee, on the principle of law that this deed vested title in Z. C. Sedberry, Trustee, did not create an active trust, but a dry and passive trust, and therefore the title vested in the beneficiaries and not in the trustee. There was no question of fraud in that case. I would like to make the further statement that Mr. Courtney was the attorney that filed that suit and Mr. Courtney did not give me the name of a single witness, or any information that I used in the suit of Thomas G. Watkins, Trustee, that I used in that suit in Franklin. That suit was instituted in May 1917, and the bankrupt filed his petition on August 24th, 1917, and did not schedule any assets.

The fraudulent purposes, as disclosed by the proof in the Chancery Court case of Watkins, Trustee, vs. Sedberry, et al., were not disclosed in that deed. The deed, in my opinion, was subject to attack alone upon the ground that it was an attempt on the part of J. H. Sedberry to create a spendthrift trust for his own benefit and of course, I had to couple that up by showing that he secured or paid the consideration for the farm to the Zellners, and procured the deed to be made from the Zellners to his wife, as trustee.

Q. Was it any purpose of you and your associates in your litigation in Franklin, Tenn., to have the court construe this Zellner deed?

A. Only to the extent of declaring it void, and that the title was in law and in fact in J. H. Sedberry, or his trustee in bankruptcy, Mr. Watkins.

Q. And did you, or not recognize that the burden was upon you and your associates to prove the fraud you had alleged in your bill, in order to have this deed set aside on the ground of fraud, and have it declared void?

A. We, Mr. Boyd, assumed the burden, but in the shape in which the pleadings were, under the holding of our Supreme Court in the case of Yost v. Hudeburg the burden of proof was really shifted. However, we assumed the burden of proof and did prove by a preponderance of evidence the fraud.

Q. As the result of the entire litigation in Franklin, did you understand that the Chancellor had decided in your favor?

A. I understood he sustained the bill, yes, and have since so understood from conversations with Chancellor Hobbs in person.

Q. And upon the information gained by you from Mr. Crockett, you drafted this first decree which you presented to the attorneys on the other side for entry?

A. I did, but together with Mr. West.

Q. By Mr. Eggleston and Mr. Handly attorneys for the Sedberrys, as to what took place at that conference in Franklin, Tenn., in the office of Mr. Eggleston, about this first decree drafted by you and your associates, who was present at that conference?

A. Judge Eggleston and Mr. Handly, Mr. Jos. R. West and Mr. R. H. Crockett and myself.

Q. I am going to ask you to state in as few words as possible, just what took place at that first conference regarding the entry of that first decree, entered in accordance with the decree delivered by the Chancellor?

A. As stated, I, in company with Mr. West, drafted the decree sustaining the bill. We, in company with Mr.

Handly went to Franklin and to Judge Eggleston's office, where we took up the decree and read it over. Objection was made to the decree—

Q. By whom?

A. By Judge Eggleston, upon the ground that the Court did not in the decree adjudicate that the complainant was entitled to an accounting with the Williamson County Bank and Trust Co., Judge Eggleston stating that as he understood the Chancellor, that he dismissed the bill as to the Williamson County Bank and Trust Co. Mr. Crockett stated that he was present and that he did not so understand the Chancellor, and that he understood that the bill was dismissed in so far as any right of the Trustee with reference to certain deeds of trust held by the Williamson County Bank and Trust Co., upon two warehouses located in Williamson County, Tennessee.

Q. Under a real estate mortgage?

A. Under a real estate mortgage. There were two other reliefs asked for in the bill against the Williamson County Bank and Trust Co., one of them was in reference to a mortgage of two thousand dollars given to the Williamson County Bank and Trust Co., upon the growing crops located on the farm in controversy. This mortgage upon the growing crops was signed by Z. C. Sedberry, Trustee, and W. H. Sedberry, one of her sons. This mortgage was executed, according to my recollection, on September 1st, 1917. I know that it was subsequent to August 24th, the date of the adjudication in bankruptcy of J. H. Sedberry, and as the Williamson County Bank and Trust Company had received the two thousand dollars realized from the growing crops upon this property, as a matter of law, if the Court sustained our bill, we were entitled to recover against the Williamson County Bank and Trust Company, this two thousand dollars realized from the bankrupt's property, after his adjudication. Another ground of relief sought against the Williamson County Bank and Trust Co. was an accounting as to all funds that had been placed to the credit of Z. C. Sedberry, Trustee, subsequent to August 24th, 1917, the date of the adjudication, which sums of course the Trustee in Bankruptcy would have been entitled to under the law, if the bill had been sustained.

Q. Now, Mr. Stokes, in this conference I understood Mr. Eggleston was insisting that the Court had adjudicated in favor of the Williamson County Bank and Trust Company, on all of these three matters?

A. That is correct.

Q. And you and your associates were insisting that

the Court had only dismissed the bill as to the real estate mortgage on the two warehouses?

A. That is correct. We had conceded there was no equity in the real estate mortgages on the two warehouses and I stated that was a matter we would take up before the Chancellor as to our right upon this mortgage for two thousand dollars and upon this accounting.

Q. All right, go ahead?

A. Objection was also made by Mr. Handly to the provision in the original decree as drafted, in which it was provided that the Receivers, L. W. Buford and Newt. Cannon, Jr., of the Chancery Court of Williamson County, should sell this farm in accord with the prayer of the bill, Mr. Handly stating he didn't see any necessity for this, inasmuch as it would result in the payment of two commissions, one commission to the receivers of the Chancery Court and another commission to the Trustee in Bankruptcy. I readily agreed, at his suggestion, to redraft this portion of the decree, and vest the title in the Trustee in Bankruptcy, instead of having it sold by the Receivers.

Q. What was done in that conference with respect to the claim made by Judge Eggleston as to these items in dispute as to the Williamson County Bank and Trust Co.?

A. Judge Eggleston's conversation indicated that he did not desire to appeal the case, and rather impressed me that he didn't think an appeal would avail him anything.

Q. Did you and your associates in this conference agree to accept Judge Eggleston's version of the proceedings in the Chancery Court, as to the Williamson County Bank and Trust Company, in dispute at that time?

A. Only on condition that that would terminate the litigation in the Chancery Court at Franklin, Tenn. There was another reason, also, for this case not being appealed.

Q. All right, state what it was.

A. As the result of a disclosure in the cross-examination of J. H. Sedberry, it developed that he had collected $1250.00 from a man named Beasley, which sum was collected by him a long time after the petition in Bankruptcy was filed, and which sum, in our opinion belonged to the Bankruptcy Court, that is, the Trustee in Bankruptcy. We had had Mr. Beasley and his son both before the Referee and had examined them with regard to this $1250.00 so appropriated by the Bankrupt to his own use, with the idea of proceeding with contempt proceedings and doubtless other proceedings of a similar nature.

There was also a note of one thousand dollars, which was signed by George Sedberry, brother of the bankrupt, payable to the bankrupt in settlement of various matters of the bankrupt's mother's estate, that the bankrupt had not turned over to the trustee, and which we had developed.

Q. Was there anything said in that conference about prosecuting Sedberry for felony under the federal law?

A. Not directly. It was however understood that so far as we were concerned, in case they didn't appeal the case, but allowed the Chancery Court case to end we would not prosecute the criminal case or any other proceedings against the bankrupt.

Q. Was anything said in that conference about raising the money to pay off the mortgage?

A. The first conference?

Q. Yes.

A. No, sir, not according to my recollection.

Q. Was anything said about your attorney's fee, in that conference?

A. Not in the first conference.

Q. As the result of that conference, you agreed to redraft the decree, did you not?

A. Yes.

Q. Now, what was the real consideration or reason for redrafting that decree, and the presentation of the subsequent decree which was entered in the Chancery Court case at Franklin?

A. The elimination of the Williamson County Bank and Trust Company and the provision vesting the title to the farm in Thomas G. Watkins, Trustee in Bankruptcy, instead of having it sold by the Receivers, and in consideration of these concessions on our part and the other concessions with regard to the contempt proceedings or other procedure of that nature, his counsel stated that they did not think he would appeal the case, but let it end there. I stated, however, I did not care whether they appealed the case or not.

Q. You also conceded the further fact you would not insist upon the repayment by Sedberry of the $1250 and the thousand odd dollars, the note.

A. That is correct.

Q. So, if I understand you, the consideration for the redrafting of the decree as the result of this conference was the elimination of the Williamson County Bank & Trust Co?

A. Yes.

Q. Second, the deeding of the property over to the

Trustee in Bankruptcy and permitting it to be sold by the Trustee, instead of having it sold by the Receivers in the Chancery Court and also by the Trustee in Bankruptcy?

A. That is correct.

Q. And third, the agreement on your part and that of your associates, not to prosecute Sedberry under the criminal law?

A. As far as we were concerned.

Q. And fourth, giving up of this claim of $1250 which he had collected subsequent to his adjudication in bankruptcy?

A. That and a thousand dollar note also some grain that he had taken down there that we had traced.

Q. And fifth, the giving up of this thousand dollar note and the grain that came in question?

A. Yes.

Q. Now was there drafted in that conference, as agreed upon by you attorneys, that resulted in the redrafting of the decree and the entering of the final decree wherein the defendants agreed not to appeal the case. Was there anything else considered?

A. No sir there was not.

Q. Mr. Stokes, you did redraft the decree, you and your associates, in accordance with the results of that first conference?

A. Yes. It was not absolutely understood at that first conference that they would not appeal, it was just a general understanding they did not think they would appeal and the decree was drafted with that provision, with the idea if at the second conference they were going on to appeal, they could strike that out.

Q. In that redrafting of the decree, you did provide no appeal would be entered?

A. Yes, sir.

Q. And it would stop in the Chancery Court?

A. Yes, in view of the fact that Judge Eggleston said he did not think it would be done if these things were done.

Q. In accordance with that, you submitted that redrafted decree to Mr. Avery Handly, practicing here at the Nashville Bar?

A. Yes, sir.

Q. What took place after you drafted that second decree?

A. After Mr. West and I drafted the second decree, I called Mr. Handly on the 'phone and told him that my stenographer had finished the decree and that I would like to take it to Judge Eggleston the next day. Mr.

Handly stated that he could not go, but that he would like to look over the decree before I took it down there. I took it down to Mr. Handly's office that afternoon, and Mr. Handly went over the decree and stated that he would write Judge Eggleston. I brought the decree back to my office and Mr. Handly called me some time in the forenoon of the next day and asked me what time I was going to Franklin. I told him Mr. West and myself would leave about twelve o'clock and he said, "I think I can go," and I said, "all right, we will wait for you. Mr. Handly came to my office, and my son, Jordan III, was in my middle office with my stenographer, Miss Swain, and Mr. West came in and we all four, that is, Mr. West and myself, Mr. Handly and Jordan Stokes, III, drove down to Franklin on the second occasion, and the decree, as redrafted, was presented to Judge Eggleston.

Q. Who was present there at that time?

A. Judge Eggleston, Mr. Avery Handly, Mr. R. H. Crockett, Mr. Jos. R. West and myself.

Q. State what was done in the second conference about the decree?

A. In the second conference I stated to Judge Eggleston when I handed him the decree, that I had redrafted the decree in accordance with the suggestions that had been made at our prior conference and had embodied in it a provision that there would be no appeal or revision of the decree sought. The decree was gone over by Judge Eggleston, read by him. Then he stated that he desired to submit the matter to J. H. Sedberry.

Q. That is, the Bankrupt?

A. That is the bankrupt. Either I, or possibly Mr. West or Mr. Crockett, suggested that it would doubtless be best for us to retire while he submitted it. Judge Eggleston said, "Yes, I want to show Mr. Sedberry the identical paper that will be signed and entered so there will be no question in his mind about substitution of any papers, that Sedberry was a peculiar sort of a fellow."

Q. Proceed.

A. Mr. West, Mr. Crockett and myself, left Judge Eggleston's office and went to Mr. Crockett's office. Mr. Handly went over to the hotel in Franklin, which is next door to Judge Eggleston's office, and got Mr. Sedberry, was my understanding. At least that is what he stated he was going to do. We left, and were gone, at Mr. Crockett's office, for some few minutes, possibly fifteen or thirty minutes, something like that, when Mr. W. J. Smith, a young gentleman in Judge Eggleston's office came to Mr. Crockett's office and stated that they were

ready for us. We returned to Judge Eggleston's office and Judge Eggleston said, "Well, we are going to sign the decree; I have submitted it to Mr. Sedberry, and it is all right." He thereupon signed the decree and after signing the decree, then, for the first time, the question of attorney's fee came up.

Q. Did both Judge Eggleston and Mr. Handly sign this decree or O. K. it.

A. Judge Eggleston signed his name, and Mr. Handly's name, and the names of the various Sedberrys, the defendants, to this decree. Mr. Handly did not sign the decree.

Q. Did you sign the decree also?

A. Yes sir.

Q. Now up to the time this decree was signed and agreed upon, in Judge Eggleston's office, had anything been said by Judge Eggleston or Mr. Handly about your attorney's fee or the fee of you and your associates?

A. No sir.

Q. So, nothing was said about attorney's fees or any settlement of the matter at all, until after the decree was signed and ready to be entered?

A. Not with regard to the attorney's fee, and very little conversation at all with regard to that.

Q. After that, what was said in this conference, about attorney's fee, and raising the money, etc.?

A. After the decree was signed, Judge Eggleston said he thought possibly Mr. Sedberry could raise the money to pay off all of the creditors and costs and expenses in the bankruptcy proceedings, and asked me what my fee would be. I stated to him that I would not discuss my fee at all, that that was a matter exclusively in the jurisdiction of the Bankrupt Court. That is where the question of the fee ended.

Q. Was that all that was said about the fee?

A. That was all, except Mr. Handly said, he would have some agreement about the fee, or he would not have signed that decree, but that if it was all right with Judge Eggleston, it was all right, as he was the senior counsel. That was all that was said.

Q. Was that all that took place at that time, Mr. Stokes, with regard to this matter?

A. Regarding the fee, yes.

Q. Was anything said about mortgaging the property by Sedberry to pay off the debts and costs of the bankruptcy proceedings, or attorney's fees, or anything else, further than what you have said?

A. Yes, there was some suggestion by Judge Eggles-

ton stating he thought he could mortgage the farm and secure enough to pay his debts and pay the costs and expenses in bankruptcy. I, however, under no circumstances, made any statement of any nature that could have been in any way considered that the Trustee in Bankruptcy would join in any mortgage of any kind. I didn't state anything that even sounded like that, nor did Mr. West or Mr. Crockett, in my presence.

Q. You said nothing then, nor did either of your associates, agreeing to or looking to an agreement as to a mortgage or any other instrument being executed by the Trustee in Bankruptcy, by which funds could be raised to pay off such debts.

A. No sir, I never heard of such procedure, and I certainly would not have agreed for an officer of the court to execute a mortgage of this kind. I had my own idea of the way they would handle the mortgage, but it was not discussed there, that was a matter for them, as I was not interested in that. I did state, however, this, to Judge Eggleston--that if they desired to raise this money and pay off everything in the Bankrupt Court, that I would get the Trustee to refrain from advertising for sixty days, Judge Eggleston only having requested thirty days; but it developed that he had to go West on account of his daughter's health, and I knew thirty days would pass mighty quick with a man going out West, and I said, make it sixty days, and doubtless said, if matters are progressing at that time, I would not be at all averse to extending the time. I will say, all during the case, courtesies were extended all the way through, one side to the other."

The Receivers were still in charge of the farm and had never been discharged.

Q. Mr. Stokes, Mr. McConnico, an attorney at the Nashville Bar, was employed, as I understand, by Mr. Sedberry, to look into this matter of your attorney's fee, and some effort was made to adjust that with you and your attorneys, through Mr. McConnico, the attorneys' fee, was there not?

A. Yes, sir. Not so much to adjust the attorney's fee, but rather, from Mr. McConnico's statement to me, that he wasn't contesting the amount of our fee, and would not do so under any circumstances, that he thought we were entitled to very liberal compensation for the work done, but that his employment was with reference to relieving what he understood to be an embarrassing position of the attorneys for Mr. Sedberry.

Q. Did you understand the embarrassing position

was the fact that the attorneys for Sedberrys in the Chancery Court case at Franklin, had agreed not to appeal, and they were thinking at that time or considering at that time, through Mr. McConnico, of taking some steps at Franklin to reopen the case, or appeal the case to the Supreme Court?

A. My understanding was that the attorneys for Sedberry felt this embarrassment on account of the contract that I had with the trustee in bankruptcy, and Mr. McConnico, I think it was November 18th, 1919, if I am not mistaken—at any rate, I went over to Mr. McConnico's office, he was ill with sore throat at the time, and he stated to me that his only position in this matter was relieving what seemed to be an embarrassing situation for Mr. Sedberry's counsel, and suggested two propositions. His first suggestion was that by agreement, the last clause in the decree in the Chancery Court at Franklin be eliminated, that is, the clause that provided that the decree should be final and no revision should be sought. I stated to Mr. McConnico, that I didn't think under any circumstances I would agree to that. My reason for it was that the case had been terminated, and that was the end of it, and told him I would not agree.

Q. All right, proceed.

A. He then suggested, he said that he could readily see and appreciate that counsel did feel a little embarrassed. He said, let us see if we can not stipulate, if you will not agree to that. Stipulate that you shall introduce your contract for all evidential purposes, and that the fee to be allowed—that in arriving at the amount of fee that would be allowed you, the Court will take into consideration all the facts and circumstances existing and surrounding the case at the time you accepted the employment, and the fact that it is contingent, and all those matters will enter into the matter in arriving at what is a reasonable fee. I want to state right here that Mr. Jos. R. West was present with me in this conference with Mr. McConnico. I stated to Mr. McConnico that I would think the matter over. Mr. West and myself returned to my office, talked the matter over and called Mr. R. H. Crockett over long distance and asked him to come to Nashville. He did so the next day, and we had a conference in regard to the matter, and decided that, inasmuch as Mr. McConnico had stated to Mr. West and myself that he thought the matter would be determined immediately if we would stipulate to this effect, to go ahead and enter into the stipulation. I, thereupon, on that day, dictated the stipulation and on the afternoon of that day, it being the day following—

Q. Is that the same stipulation that has been filed in this case by the attorneys for Sedberry?

A. Yes, and on that day, that is, the day following the first conference with Mr. McConnico, in the afternoon, Mr. West and Mr. Crockett and myself went to Mr. McConnico's office with this stipulation. Mr. McConnico stated that he thought the stipulation was all that any one could ask, but that he did not have authority, nor would he assume the authority to close the matter. I stated we wanted the matter closed immediately, that Mr. Brock was insisting that the suit be closed, that the creditors were entitled to their money, and I told Mr. McConnico on this that we wanted an immediate answer to it, inasmuch as he felt it had to be sent to the Sedberrys or rather to Judge Eggleston.

Q. Did you sign that stipulation then and there?

A. I did, with that understanding, that it was to be subject to immediate acceptance by the Sedberrys.

Q. And that was in November, 1919?

A. I think it was November 18, 1919. The exact date is disclosed by the letters in this case.

Q. Did you hear anything more from that stipulation between November 18, 1919, and January 7, 1920?

A. Yes, sir.

Q. State what that was.

A. Several days, I should say about a week after the stipulation had been signed in Mr. McConnico's office, I called Mr. Avery Handly and asked him what he was going to do about it, that stipulation, and he said he had sent it to Judge Eggleston, who had, in turn, forwarded it to the Sedberrys.

Q. Did he say where the Sedberrys were?

A. Yes, in Texas. I stated to Mr. Handly that stipulation was subject to immediate acceptance, and I wished he would hurry the matter up and let me know what they were going to do with regard to it. From that time until after the 7th day of January, I never heard anything further in regard to the stipulation.

Q. Not having heard anything further with regard to it, that is, whether the Sedberrys or their counsel signed or approved it, what did you do on January 7, 1920?

A. On January 7, 1920, I wrote a letter to Mr. McConnico, respectfully withdrawing the stipulation."

"A. There is one other matter that came up at the time that the final decree was signed in Franklin, that I think is material, as showing that the reason for not appealing this case was the Williamson County Bank &

Trust Co. Judge Eggleston at the first conference came out on the sidewalk to my automobile, and said, now you are going to eliminate the Williamson County Bank & Trust Company, and seemed very insistent in regard to eliminating the liability of the Williamson County Bank and Trust Co., in the final decree at Franklin. So much so was his insistence about the elimination of the liability of this bank, that in the automobile returning to Nashville, Mr. Avery Handly stated to Mr. West and myself, "By Gum," or some word to that effect, "It looks like Judge Eggleston is really more interested in relieving the Bank from liability than getting the Sedberry's out. I state that as showing that was the real reason for not appealing the case, eliminating their liability."

I have been practicing at the Nashville Bar for sixteen years and I consider my contract with the trustee provides for a reasonable fee, under the circumstances, and in the absence of any agreement, I think I should get 50% of the recovery. I have entered into a number of contracts for 50%, where I had to assume nothing like the liabilities I have had to assume in this case.

Cross-examination.

While I am not in the habit of taking cases on a contingent basis and assuming the expenses of a lawsuit with my client, I have done so in a few cases.

"A. I have, where I thought it was a meritorious case, and where the client, on account of his financial condition could not advance the money to carry on the litigation and enforce his rights, I have done so, yes. I think it is the duty of the lawyer to do that." I don't see any difference between a contingent fee in Chancery or in any other court.

I saw the Timmons bill filed in the Chancery Court at Franklin, before I filed a bill for Watkins, Trustee, and had talked casually with the attorney who had filed that bill. The complainant in that case, Mr. Timmons, became a witness in my suit and he made a good witness. The first draft of the decree I carried out to Franklin did not have anything in it about the Sedberrys not appealing. I did not tell the attorneys on the other side at any of our conferences at Franklin, about my fee contract or that I was going to claim 50% of the Sedberry estate. I wasn't asked the question. If the gentlemen wanted to know it, there was a decree entered in the Bankruptcy Court on Oct. 24, 1917, to employ Counsel and contract with him as to fee. This is shown by decree and minute entry of record in the Bankruptcy Court in the case of

Jordan Stokes, Jr. R. H. Crockett

J. H. Sedberry, Bankrupt. I didn't know whether they knew of my contract with the trustee or not. I didn't say I would let the Bankruptcy Court fix my fee. I said it was exclusively a matter in the jurisdiction of the Bankruptcy Court. I didn't think it was an absolutely binding contract, but was subject to review by the Court. I thought it was binding on the trustee and the referee, but thought it would be subject to review by Judge Sanford. I had not told Mr. Crockett at that time about my contract with the trustee. I told Mr. Crockett, win or lose, I would pay him $100.00 at least. I expect to make a proper division of the fee with Mr. Crockett and Mr. West.

I am suing on my contract and for my expenses in addition to 50% of the recovery. There was no one else to advance the money for expenses but me, and I did advance it. If I had not advanced the expense money, there would have been no estate created.

R. H. CROCKETT (Recalled).

Direct Examination.

I was present in Court when the Chancellor rendered his opinion at Franklin, and also at the first conference over the draft of the decree. The Chancellor was very brief in what he said from the bench and did not go into any elaborate details. He said in substance, what Judge Eggleston has testified to. The Chancellor said he would make no disposition of the Ferry claim, that it would be passed to the Federal Court as he had no jurisdiction, and I asked him if the bill was sustained with respect to this Ferry matter, that went to the referee and he said yes. As I stated to Mr. Stokes that the bill was sustained in every particular, with exception that the Ferry matter would pass to the referee for jurisdiction, and with respect to the Williamson County Bank matter, the mortgage, there would be reservation with respect to the accounting. I told him that Judge Eggleston differed with me as to what the Chancellor had held in the Williamson County Bank matter, and it might be necessary to find out from the Chancellor, just what he had adjudicated. That was one item of discussion in connection with the first decree. Another was, whether a sale should be had by the Receiver, and upon Mr. Handly's suggestion, that that would involve two commissions, it was agreed that should go out. We finally agreed that

the matter as to the claim against the bank we would recede upon and recede from the sale by the Receiver, and let the title to the property be vested in the Trustee. And I understood that if these matters were eliminated, that there would be no appeal. There was no agreement but that was the understanding.

The parties then returned to Nashville, and several days later, came back with a new draft of the decree. I think Mr. Handly was present at the second conference, although he differs with me on that.

At the second conference, the redrafted decree was read and they asked permission to submit it to Sedberry. Thereupon, we retired, and when we came back, the redrafted decree was signed. Up to the time the decree was signed, nothing had been said about attorney's fee or mortgaging the property to provide for the payment of the debt. Afterwards, Mr. Handly asked what the attorney's fee would be, and Mr. Stokes declined to enter into any agreement and said that would be a matter that would be determined in the Bankruptcy Court, and said it was not a matter for the Chancery Court proceedings. It was understood that there would be no appeal.

It was talked about generally that the Sedberrys contemplated raising money to meet the obligations without a sale of the property, but I did not understand there was any agreement, as that was a matter we were not interested in. We understood that they expected to try to do that.

Afterwards I went to Nashville and Mr. Stokes told me of his interview with Mr. McConnico, and we signed that stipulation, with the understanding that it would be off if the Sedberrys did not approve of it; and he said he would recommend them to sign it. It was subject to the approval of the Sedberrys. The next I heard about that was Mr. Stokes showing me a copy of a letter of January 7, 1920, he had sent Mr. McConnico, withdrawing the stipulation. No one reported to me that the Sedberrys or their counsel had approved it.

I have been practicing law since 1893; and considering the extent and character of the services rendered by Mr. Stokes and his associates, I think that his contract with the trustee provides for a reasonable fee. I think few lawyers would have undertaken the responsibility and the work under that kind of a contract; even without a contract I think 50% of the recovery would have been a reasonable fee.

R. H. Crockett Jos. R. West

Cross-Examination.

I don't think any great number of cases are brought in the Chancery Court on contingent fees. I know of but very few cases brought on contingent fees. I am not accustomed to prosecuting cases of that kind on a contingent fee. I see no difference in a contract for a contingent fee in the Chancery Court, and any other Court. As a general proposition, contingent fees are not frequent in the Chancery Court. They are generally personal injury suits. Nobody said anything at that conference—that if Sedberry and his wife and children did not appeal, we would not put him in jail. I can't say that Mrs. Sedberry and her children were much interested in the Williamson County Bank matter. I am frank to say such was not a very satisfactory reason for them not appealing. I didn't think they could get anything on appeal. The longer I think about it, the more I am convinced that the moving thing that prompted them not to appeal was, that there was a very remote chance of reversing the decree, and an appeal would increase the costs and keep the case in court a year longer. Also, the Williamson County Bank and Trust Company was relieved from the necessity of an accounting, and also, for certain proceedings pending before the Referee, involving an effort to require the bankrupt to pay in $1,250.00 on the Beasley account, of a note of $1,000, and other matters, and that these matters would be stopped if the decree was signed and the matter settled without appeal. While these are not all the reasons, they are the best I thought of.

There was no question raised as to the validity of the Williamson County Bank & Trust Company's real estate mortgage debt. I think the fee ought to be 50% under the contract, or 50% on a quantum meruit, under all the facts and circumstances of the case. I would not have signed the contract with the trustee that Mr. Stokes did, with the peculiar terms and provisions in it, agreeing to pay all the expenses. I would not have assumed this financial liability.

JOS. R. WEST (Recalled).

Direct Examination.

My written affidavit has heretofore been submitted which was treated as my direct examination. I assisted in drawing the decree in accordance with what I under-

stood was the Chancellor's opinion, and then went to Franklin with Mr. Stokes, with the first drafted decree, and was present at that conference. Mr. Crockett, Mr. Stokes, Mr. Handly, Judge Eggleston and I, were present at that first conference.

"Q. State in as few words as possible what was said, and done, at that time regarding the entry of that decree as the decree of the Court in that case?

A. We understood that the decision of the Chancellor sustained the bill in all of its aspects, except with regard to the Williamson County Bank and Trust Co., in connection with the mortgage it held on the warehouses and lots at Thompson Station.

Q. That is the real estate mortgage?

A. Yes, and the decree was drawn with that aspect, and adjudicating an accounting with the Williamson County Bank and Trust Company, with regard to the deposits to the credit of the account of Z. C. Sedberry, Trustee, after the petition in Bankruptcy had been filed, and also with regard to the mortgage upon the growing crop made by Z. C. Sedberry, Trustee, and W. H. Sedberry, in September, I think, after the petition in bankruptcy had been filed. That particular feature was the one that seemed to be most objectionable to Judge Eggleston. He objected to that and there was considerable discussion between Judge Eggleston and Mr. Crockett and the others, of course, with regard to that feature of the decree and of the adjudication of the Chancellor upon that particular question. During the discussion, Judge Eggleston said he was anxious to settle the whole matter, and finally a suggestion came, I think from Judge Eggleston, if the Bank question was eliminated and the bill dismissed, as to the Williamson County Bank and Trust Company, that they would agree for the Sedberrys that that decree should be final, and there would be no appeal or revision sought thereof in any way.

Q. You say that came from Judge Eggleston, that suggestion?

A. That suggestion came from Judge Eggleston, is my recollection. He seemed to be particularly anxious to have the question as to the Bank, settled in favor of the Bank entirely. There was some discussion, generally, about other proceedings that were contemplated, and then in progress, with regard to the bankrupt, J. H. Sedberry. He had been brought back before the Referee for further examination with regard to some twelve hundred dollars, I believe, that had been collected by him after the petition in bankruptcy had been filed, and his brother

had also been brought before the Referee and interrogated in regard to a thousand dollar note transaction, and the final understanding was, that if that decree was final, and the Williamson County Bank & Trust Company was eliminated from the decree entirely, and the bill dismissed as to it, and that decree should be final, and no review sought, that so far as the Attorneys for the trustee were concerned, the further proceedings against Sedberry in the bankruptcy court would be dropped, and that would terminate the matter, the title to the farm be vested in the trustee in bankruptcy. Now, that suggestion came from Mr. Avery Handly, the decree as originally drawn directing the Receivers to sell the property, and Mr. Handly suggested that would make two commissions and there could be no advantage in that, and that the title should be vested in the trustee in bankruptcy, so there would be only one commission attendant upon the sale of the bankrupt's property.

Q. Was there anything said, Mr. West, in that conversation about the claim of the Broadway National Bank and the reduction of the claim to a certain amount?

A. I don't think so. I think that matter was discussed at the second interview, when we carried back the amended decree. It might have been referred to, however, but I do not think it was.

Q. Have you stated in substance all that occurred as you remember it in that first discussion, the conversation on the first decree, as drafted by you and Mr. Stokes?

A. I think so, yes.

Q. Now, a second decree was drafted by you and Mr. Stokes was it not?

A. It was.

Q. What did you do with that, after you redrafted the decree in accordance with the understanding at the time the first decree was discussed.

A. We took that to Franklin, and first got Mr. Crockett and then, all three of us, went around to Judge Eggleston's office to submit that decree to him.

Q. Do you remember whether Mr. Handly went with you and Mr. Stokes.

A. Mr. Handly was with us, I think went with us in Mr. Stokes' automobile to Franklin.

Q. You are certain he was present at the second discussion?

A. He was there.

Q. State what took place there. Were the same parties present?

A. The same parties present.

Q. The same five attorneys?

A. Yes. I don't recall that Mr. Smith was in the room at that time.

Q. All right, proceed.

A. That decree as amended, was submitted to Judge Eggleston and he read it and he said to us that while he had authority to sign that decree, that Sedberry was in town and he preferred to let Mr. Sedberry see that decree and he was particular in his request. He said he wanted the original decree that was to be entered on the minutes of the court, so there could be no question with Mr. Sedberry then or thereafter, that a copy of a paper was submitted to him and not the paper actually entered on the Minutes, so the original decree was left with him; and at his suggestion, Mr. Stokes and Mr. Crockett and I went around to Mr. Crockett's office to await a message from him. We were gone probably fifteen minutes, when Mr. Smith told us Judge Eggleston was ready for us. We went back to Judge Eggleston's office and he said he had submitted the decree to Mr. Sedberry, and in fact we met Mr. Sedberry coming out of Mr. Eggleston's office, I think, as we went in, and thereupon the decree was signed by Mr. Stokes, who signed all three of our names, as solicitors for the complainant; and Judge Eggleston signed the decree for the defendants, signing Mr. Handly's name too, I believe, to the decree.

Q. Was there any change or alteration made in that decree, Mr. West, at that time and before it was signed by all the parties?

A. There was none.

Q. Is that the decree that was entered in the Court at Franklin, Tenn?

A. There was none. Yes, it was the same decree, that is my understanding. It was given to Mr. Crockett there in Judge Eggleston's office to be carried to the Clerk & Master for entry.

Q. Now, up to the time that decree was signed and agreed upon in Judge Eggleston's office, had anything been said about mortgaging the property to pay off the debts, or any attorney's fee, to be charged by Mr. Stokes?

A. Not until after the decree was signed.

Q. I say, up to the time the decree was settled, had anything been said about anything of that kind?

A. Nothing.

Q. After the decree was signed, was there anything said about the fee of Mr. Stokes?

A. Mr. Handly, I think, asked what Mr. Stokes would

ask as a fee and Mr. Stokes replied **that is a matter I will not discuss with you at all, it is a matter exclusively for the bankruptcy court, and I will not discuss that matter with you.**

Q. Was anything said about paying off the debts, that you remember?

A. Judge Eggleston said, after the decree had been signed, that Mr. Sedberry owed the debts and they ought to be paid, and he hoped to be able to raise the money on the place and pay off everything, and that he would like for thirty days' delay; first he asked or said he would like for the trustee to delay any proceedings in connection with the sale of the property for thirty days, and he said to us that he had a sick daughter and he wanted to go with her somewhere on account of her health and would like a delay of thirty days before any steps were taken; and Mr. Stokes at once replied, well, make that sixty days, and I think a suggestion was made, if matters were in progress and looked like a conclusion would be reached, there would be no question about further time beyond the sixty days, if necessary.

Q. Mr. West, after this decree was entered in the cause at Franklin, Tenn., and before the filing of the petition in this case, the bankruptcy proceedings, was anything said or any steps taken looking to a stipulation as to the fee of Mr. Stokes?

A. One day in November, Mr. McConnico came to me over in the court house and said that a matter had been brought to him and he came to me in the first instance to talk with me about it, that Judge Eggleston and Mr. Handly were in an embarrassing situation with regard to their client, on account of the contract that had been made by Mr. Stokes with the trustee in bankruptcy, on the question of fee and his employment. Without stating the details of all the conversation, he suggested there were two grounds which he was considering with regard to that decree at Franklin, and that fee matter. The first was to file a petition at—

Q. At Franklin?

A. Yes, at Franklin, in the nature of a bill of review to review that decree and eliminate that last clause which provided neither party would seek to review or revise that decree by appeal or otherwise, and the other was an agreement on the part of Mr. Stokes to waive the amount of compensation as fixed by his contract and let it go to the Referee to let it be fixed upon a basis of quantum meruit for the services rendered. I told him I would see Mr. Stokes and talk to him about the matter, that he

was mainly interested and I was simply brought into the case with him. I saw Mr. Stokes that day, or the next day, and submitted the matter to him and after talking with him we made an appointment with Mr. McConnico and went to his office to discuss the matter with him. Mr. Stokes told Mr. McConnico that the first proposition that was suggested would not be considered; that is, that a petition to review that decree in the Chancery Court at Franklin and eliminate that clause mentioned in the final decree. But that we would consider the other matter, whether he would not be willing to waive the contract with regard to his fee, in so far as it fixed the amount of his compensation and let it be determined upon a quantum meruit basis. I think the next day Mr. Crockett came down from Franklin, and the three of us, Mr. Stokes, Mr. Crockett and I, made a visit to Mr. McConnico's office,, met and discussed the matter and it was agreed that the second of Mr. McConnico's suggestions would be acceptable; that is, to waive the contract in so far as it fixed the amount of the compensation, but the contract should be used for all evidential and other purposes, except fixing the amount of his compensation, and that should be determined as upon a quantum meruit. That was drawn up and taken to Mr. McConnico's office and there signed by Mr. Stokes.

Q. Do you recall whether or not Mr. McConnico said he had authority to sign that stipulation for the Sedberrys at that time, and thereby make it final?

A. He said he did not, and would not assume the authority but would send it to Judge Eggleston and Mr. Handly and have them sign it, but I think he signed it, perhaps, as signifying his approval of the terms of the stipulation.

Q. Was there anything said or any understanding had at that time as to how long that stipulation should be open.

A. Mr. Stokes said to Mr. McConnico that the matter had dragged along quite a while and that promptness was desired in connection with the matter.

Q. After that, Mr. West, did you or either of your associates, Mr. Stokes or Mr. Crockett, to your knowledge, receive any information from Mr. McConnico, Mr. Handly, or Mr. Eggleston, or any of the Sedberrys, that that stipulation had been agreed upon?

A. I did not personally, nor did the others, so far as I know.

Q. Did you know that it had been agreed to or approved by the Sedberrys or their attorneys until after

the proceedings in this case were taken, some time in January 1920?

A. Not until after that letter was written by Mr. Stokes, I think the 7th of January, 1920.

Q. Did Mr. Stokes confer with you in the writing of that letter about withdrawing the stipulation?

A. He did, and showed me the letter, and gave it to me to hand to Mr. McConnico, who was at that time trying a case in the Second Chancery Court, and it was handed to Mr. McConnico by the officer, in the Chancery Court that afternoon."

I have practiced law at Nashville, and admitted to the Bar in 1880; and was deputy Clerk and Master of the Chancery Court at Nashville, Tenn., from 1885 to 1912. From December 1, 1912, to Nov. 30, 1918, I was an officer and examiner of titles, and attorney for the Guaranty Title and Trust Company, and Security Title Company of Nashville, Tenn. I am now Clerk and Master of the Chancery Court at Nashville, Tenn.

"Q. By reason of your experience as a lawyer at the Nashville Bar, and your duties as Deputy Clerk and Master, and Clerk and Master of the Chancery Court at Nashville, Tenn., do you think you are qualified to pass upon the fee of a lawyer here at the Nashville Bar for services rendered in cases?

A. Yes sir.

Q. Have you had to pass upon fees as deputy Clerk and Master?

A. Many of them, yes, and make reports on them.

Q. Mr. West, do you think that the contract of Mr. Stokes with the Trustee in Bankruptcy in this case, assuming the facts are true as to services rendered and as to character and extent and risks assumed, do you think that contract provides for a reasonable fee?

A. I do.

Q. Suppose there was no provision for a percentum in the contract of that kind, what would you think would be a reasonable fee for the services rendered by Mr. Stokes on a quantum meruit basis?

A. The same amount as is stipulated in the contract.

Q. You mean by that, fifty per cent of the recovery.

A. Yes, fifty per cent of the estate covered and vested in the Trustee in Bankruptcy.

Q. What do you understand to be or constitute the estate recovered by Mr. Stokes, and you and Mr. Crockett.

A. I understand the property that was actually recovered as the result of the suit at Franklin, Tenn., and

ordered paid over to the Trustee in Bankruptcy, the title vested in that trustee, that consisted of certain personal property, the proceeds of the farm, and stock and implements on the farm and the crops growing thereon, amounting to about twenty five or thirty thousand dollars, and the farm itself, containing about three hundred and thirty seven acres, the title to which was vested in the trustee in bankruptcy, which my information was, was worth seventy or seventy five thousand dollars.

Q. You understand that the attorneys for the Sedberrys have agreed that the farm or real estate shall be treated at a valuation of seventy thousand dollars?

A. I so understand."

Cross-Examination.

The Chancellor decided the case at Franklin in July, 1919. Then Mr. Stokes drafted a decree and he and I and Mr. Handly went to Franklin. Possibly Mr. Stokes' son was with us on that first trip. We had a conference when we got there and as a result of that conference came back to Nashville and made a redraft of the decree, which was submitted to Mr. Handly. Then in a few days made another trip to see Judge Eggleston. I think Mr. Handly, Mr. Stokes and his son went on that second trip, in Mr. Stokes' automobile. Nobody else. Showed Judge Eggleston and Mr. Handly the redrafted decree. Did not go down to Franklin any other time about that period to see Judge Eggleston. These two trips were made early in August. There is a hotel in Franklin known as Mays Hotel. Looking at the register of said hotel for August 8, 1919, which was the date of the second conference, I see the following names written: R. H. Crockett, J. R. West, Mrs. Jordan Stokes, Jr., Jordan Stokes, Jr., Jordan Stokes, III, Jas. W. Stokes. Mrs. Stokes went with us on only one occasion. I still think Mr. Handly went down with us on that second trip. On the hotel register under August 6, 1919, I see the names—Avery Handly, J. R. West, Jordan Stokes, Jr., Jordan Stokes, III. Nothing was said about the attorney's fee of Mr. Stokes, or mortgaging the property, until the final decree was signed and everybody was about to disperse.

I saw the contract between Mr. Stokes and the Trustee in Bankruptcy at the time it was drawn in 1917.

When Mr. Handly asked Mr. Stokes about his fee I did not say anything about Mr. Stokes' contract calling for 50% of Mr. Sedberry's estate, neither did I tell Mr. Handly we were expecting to get 50% of Mr. Sedberry's farm and property. When I said the amount of the per-

sonal property in the hands of the receivers was $25,000, or $30,000, I was including in that amount, the amount that the Receivers had already turned over to the trustee in bankruptcy and the judgment for $11,000 or $12,000 against the D. M. Ferry Company, and the balance of the crop and implements now in the possession of the receivers.

The paper handed dated November 19, 1919, is the stipulation signed by Mr. Stokes and Mr. McConnico on that day. That is Mr. Jordan Stokes, Jr's., signature.

At the second interview at Franklin about the decree, the matter of the Broadway National Bank debt came up and Judge Eggleston said Mr. Sedberry felt aggrieved at the way he thought that the bank had treated him and Mr. Stokes said he would suggest to the bank officials to reduce their claim to the actual amount of their debt, with costs and expenses and attorney's fee. The truth of the matter was, that at the second interview, most of the discussion took place after the decree was signed. It was then that Mr. Handly asked Mr. Stokes about his fee, and about the Broadway National Bank matter. The first decree didn't have any clause about the parties not appealing.

Re-Direct Examination.

After the decree was signed I may have gone to Franklin with Jordan Stokes, Jr., and his wife and son in an automobile, I don't recall. Mrs. Stokes did not go out there on the day we had business in connection with this case. I went with Mr. Stokes and his family to various places; I do not recall definite instances.

"A. August 6th, yes, sir. Now, back to that other question about going down there with Mr. Stokes and Mrs. Stokes, and the children; I do recall we went down to Franklin, Mrs. Stokes being along, and we went to Thompson Station, and we stayed down there until after dark and got back to Nashville about ten or eleven o'clock that night; and I think we took supper in Franklin, that night.

Q. Now, that was on a pleasure trip, was it not?

A. Yes, sir."

Re-Cross Examination.

I can't say whether August 6, 1919, was the day the decree was finally signed. I think it had been signed before August 8th. I am not at all sure about that. I do not say I was not there on August 8th. It looks to me that the names of R. H. Crockett, J. R. West, Mrs.

Jos. R. West — Avery Handly

Jordan Stokes, Jr., Jordan Stokes, III, James W. Stokes, appear on the register under date of August 7th, and not under August 8th, at all."

By Mr. Farrell: "I want to offer these as exhibits to Mr. West's testimony and as part of his testimony."

AVERY HANDLY (Recalled).

Direct Examination.

I am positive that I did not go to Franklin on the occasion of the second conference about the decree. Since I formerly testified, I have looked through my letter files and found a copy of a letter which I addressed to Judge Eggleston on August 7th, 1919. It is a correct copy and I now read the same as follows:

"Nashville, Tenn., Aug. 7, 1919.

"Judge J. E. Eggleston,
Franklin, Tenn.

Dear Judge:

Our adversaries presented decree to me this morning and they certainly concede very little and still want a lengthy decree entered. As we are settling the case, I do not see any objection to the decree except I do seriously object to their purpose of taking a decree against D. M. Ferry Company and its surety for some $11,000 and permitting execution which will result in nothing more than the trustee getting more commission and requiring Mr. Sedberry to raise that much more, which he would be entitled to receive back.

Confidentially, I had a talk with Mr. Brock this morning when I was up there on another matter, and he expressed some indignation about our not agreeing on what the attorneys' fees should be, the very thing that I knew he preferred to be done, but as I stated before, I had rather risk it to him than to try to arrive at any agreement with Stokes.

He stated that he was going to demand of us that we attempt to agree.

Mr. Brock also suggested, with respect to the Ferry matter, that it might be better for us if we simply agree to pay in the trustee's commission on this fund which would be about $100.00 and get an assignment from Ferry of its claim and release from

the trustee on the execution. He intimated that he would not consider that, on the question of allowing attorneys' fees. I believe the arbitrary insistence of complainant's solicitors, this Ferry matter being incorporated in the decree, may result in prejudice in our favor.

Yours very truly."

This was all the evidence. It was then stipulated and agreed that the receivers in the Chancery Court case should file a statement showing the funds and property coming into their hands, with the valuation on the property not reduced to cash, including growing crops and all personal property on hand, their opinion of the value of such personal property, and the Receivers of the Chancery Court filed such report showing personal assets amounting to $27,943.01, and such valuation should be added to the valuation of $70,000 the agreed value of the real estate and the valuation placed by the Receivers shall be binding upon all parties.

Mr. Farrell then stated to the referee, at the close of all the proof that he desired to move on behalf of the Sedberrys to dismiss the claim of Messrs. Stokes and his associates, because based on an illegal and void contract, and that it is the duty of the court to dismiss their claim. He also moved to strike out the claim of $1,100.00 for expenses on the following grounds: (1) Because they are not professional services; (2) Are not sought to be recovered under a legal contract; (3) Are not properly itemized; (4) Because the stenographer's fees were not authorized in advance by the referee; (5) Because the stenographer's fees are not shown in detail to be within the lawful fee prescribed by the bankruptcy act. Whereupon the referee said: These matters could be discussed in the argument on the following day.

CERTIFICATE.

I hereby certify in accordance with the stipulation of counsel (at p. 260 herein) that the foregoing abridgement of the testimony correctly embraces all the testimony desired by the respective parties in furtherance of their respective appeal.

This Feb. 14, 1921.

Edward T. Sanford,
U. S. District Judge.

CERTIFICATION AND FINDINGS OF FACT BY THE REFEREE, IN MATTER OF COUNSEL FEES— Entered April 20, 1920.

I, Lee Brock, one of the Referees of said Court in Bankruptcy, do hereby certify that in the course of the proceedings in said cause before me the following questions arose pertinent to the said proceedings.—

1.—To determine whether or not a certain contract for employment as counsel on behalf of the Trustee by and between Jordan Stokes, Jr., and the Trustee in Bankruptcy of the above named estate was legal and proper, or whether same was champertous and void.

2.—To determine the amount of fee that should be allowed said Jordan Stokes, Jr., as counsel for said Trustee on a *quantum meruit* basis in the event that the contract above referred to was unauthorized or champertous.

3.—To determine the amount to be paid to Jordan Stokes, Jr., for expenses incurred by him as attorney for the Trustee.

These questions were raised by a petition filed by the bankrupt and the members of his family, asking that the compensation of Jordan Stokes, Jr., be determined by the Referee. To this petition answers were filed by the Trustee and also by Jordan Stokes, Jr., and his associates Joseph R. West and R. H. Crockett, which answers were to be treated, if necessary, as cross-petitions; and to said answers as cross-petitions answers were filed by the bankrupt. Proof was taken upon the issues thus made up and a summary of the proof and record in this cause is as follows:

The bankrupt filed a voluntary petition and was duly adjudged a bankrupt on the 24th day of August, 1917. The bankrupt scheduled no assets whatsoever except two warehouses located in Williamson County, Tennessee, and a parcel of real estate in Cannon County, Tenn., all of which were encumbered to their full value, and also certain household and kitchen furniture which was claimed as exempt.

After the election of Thos. G. Watkins as Trustee of said estate, Jordan Stokes, Jr., appeared before the Referee and requested that subpoenaes issue for the bankrupt and members of his family for examination. The bankrupt and certain members of his family were examined, and their testimony taken down by a stenographer, at the expense of Mr. Stokes, or the creditors represented by him. After this examination Mr. Stokes was employed by the Trustee and entered into the following contract.

Certification and Findings of Fact by the Referee

(See p. 14 this transcript wherein contract is fully copied.)

This contract was approved by the Referee. After said contract was signed, said Jordan Stokes, Jr., associated with him Joseph R. West and R. H. Crockett, to assist him in any litigation that might be undertaken under said contract. Mr. Stokes and his associates filed a bill in the Chancery Court at Franklin, Tenn., attacking a certain conveyance of real estate of the agreed value of $70,000.00, to Mrs. Z. C. Sedberry, wife of the Bankrupt, and which deed was executed on the 1st day of January, 1902, fifteen years before the filing of the voluntary petition by the bankrupt. Said deed was registered in Williamson County, Tenn., April 9, 1904.

The suit was in many respects a novel one, and it appeared to hold out but little prospect for an ultimate recovery on behalf of the creditors. The litigation in the Chancery Court at Franklin over this farm and its proceeds extended over a period of about two years, and was contested by the Bankrupt under the direction and guidance of able counsel with vigor. The services performed by Mr. Stokes and his associates were of a high legal order, and resulted in the recovery of real estate of the agreed value of $70,000, and personal property of the value of $29,743.01, making a total recovery of the farm and personal property of $97,943.01, the title of all of which property, both real and personal, was vested by decree of the Chancery Court at Franklin in Thos. G. Watkins, Trustee in Bankruptcy.

The bankrupt scheduled debts at the time of filing his petition in bankruptcy amounting to $18,260.53. One of the debts so scheduled was reduced by consent of all parties from $7,115.00 to $5,500.00, thus making the claims that were scheduled aggregate the sum of $16,643.53. There have been claims filed against the estate within the statutory period of one year, with interest to date, amounting to $17,336.32. D. M. Ferry & Co. filed a claim on Sept. 22, 1919, for $10,378.20 with interest from January 20, 1918, making the total amount of this claim, with interest from date, $11,537.10. Other small claims have been filed, amounting to $535.85, making the total amount of claims filed (including that of D. M. Ferry) $29,409.27. The amount of claims scheduled which have not been filed amount, with interest to this date, to $2,628.97.

The bankrupt made the transfer to his wife many years before any of the present scheduled debts were contracted, and the bankrupt was informed by honest and

eminent counsel that his interest in the farm and its proceeds was not one required to be scheduled by him at the time he filed his voluntary petition in bankruptcy.

On May 17, 1917, Thos. J. Tinnon, a judgment creditor of the bankrupt, had filed a bill in the Chancery Court at Franklin, Tenn., attacking the transfer by the bankrupt of said farm in 1902, and said Jordan Stokes, Jr., had read this bill, and had talked with Tinnon's counsel previous to the filing of the bill by said Stokes on behalf of the Trustee on August 24, 1917. The bill as filed by the judgment creditor Tinnon was not filed on the same basis as that by the Trustee, though both charged fraud in said conveyance. At the time the final decree was signed in the Chancery Court at Franklin, in which the farm and its proceeds were decreed in the Trustee in Bankruptcy of J. H. Sedberry, the bankrupt, and his attorneys signed the agreement not to appeal from the decree of the Chancellor in ignorance of the fact that Jordan Stokes, Jr., had made a contract with the Trustee as hereinbefore set out.

From all the evidence, exhibits, etc., I was of opinion,

(1) That the contract hereinbefore set out between Jordan Stokes, Jr., and the Trustee in Bankruptcy of said estate was unlawful and unauthorized.

(2) I was of opinion that said contract was not champertous and void.

(3) I was of opinion that said Stokes was entitled, on a *quantum meruit* basis, for services rendered the estate, to a fee of $10,000.00.

(4) I was further of the opinion that he would be allowed expenses amounting to the sum of $750.00.

I hereto attach and make a part hereof, the entire record in this cause, as in my opinion, the entire record should be sent up by me; and in addition, counsel for all parties in interest desire the entire record certified and sent up on their respective petitions for review. I accordingly attach hereto said entire record, numbering and identifying same as follows:

1. Petition of Sedberry, et al., to have amount of claims, costs, expenses and attorney's fees in this cause fixed.

2. Answer and Exhibits of Thos. G. Watkins, Trustee, to Sedberry petition.

3. Answers of Stokes, West and Crockett, to Sedberry petition.

4. Answer of bankrupt to answer and petition of Stokes and others.

5. Statements of Jordan Stokes, Jr., Jos. R. West, R.

H. Crockett, and exhibits to such statements which comprise the entire record of the Chancery Court case at Franklin, Tenn., and the records of this Court in this matter up to the filing of the Sedberry petition, identified as No. 1, to this Finding of Fact.

6. Record of the testimony and proceedings had before me upon the petition of Sedberry and the answers thereto, hereinbefore made a part of this finding.

7. Affidavit of Avery Handly, which was treated as his original testimony in this matter.

8. Exhibits to the testimony of Avery Handly.

9. Exhibit to the testimony of Jos. C. Eggleston.

10. Report of L. W. Buford and Newt. Cannon, Jr., Receivers in the Chancery Court cause made in pursuance of stipulation of Counsel.

11. Petition of the Trustee for authority to employ Counsel and my order made thereon.

12. My order made in these proceedings, which is certified for review.

13. Petition for review of order, No. 12, filed by Stokes and others.

14. Petition for review of order, No. 12, filed by Sedberry and others.

15. Copy of written opinion of the Referee.

Said questions hereinbefore set out are certified to the Judge for his opinion thereon.

Dated at Nashville, Tennessee, the 20th day of April, A. D., 1920.

Lee Brock,
Referee.

The Petition of Jordan Stokes, Jr., etc., for a Review

ORDER OF REFEREE ALLOWING COUNSEL FEES
—Entered March 13, 1920.

This cause came on to be finally heard before the Honorable Lee Brock, Referee in Bankruptcy, on this, 13th day of March, 1920, upon the entire record in the cause and argument of Counsel;

Therefore, upon consideration thereof, it is ordered, adjudged and decree as follows:

1st: That the Trustee in Bankruptcy had no authority, either in law or in equity, to contract in advance for the amount to be paid for the legal services of Jordan Stokes, Jr., rendered in this cause.

2nd: That Jordan Stokes, Jr., be, and he is allowed a fee of Ten Thousand ($10,000.00) Dollars, to be paid out of the funds or property in the hands of the Trustee.

3rd: That Jordan Stokes, Jr., be, and he is hereby allowed the sum of $750.00, as expenses, to be paid out of the funds or property in the hands of the Trustee.

This 13th day of March, 1920.

Lee Brock,
Referee.

THE PETITION OF JORDAN STOKES, JR., JOSEPH R. WEST, R. H. CROCKETT, AND THOMAS G. WATKINS, TRUSTEE OF THE ABOVE ENTITLED ESTATE, FOR A REVIEW OF THE REFEREE'S ORDER ENTERED HEREIN ON THE 13th DAY OF MARCH, 1920—Filed March 22, 1920.

To the Honorable Lee Brock, Referee in Bankruptcy:

Your petitioners, Jordan Stokes, Jr., Joseph R. West, R. H. Crockett and Thomas G. Watkins, Trustee, respectfully represent and show to the Court as follows:

That there was filed in this cause, a petition on behalf

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The Petition of Jordan Stokes, Jr., etc., for a Review of J. H. Sedberry, Bankrupt, Mrs. Z. C. Sedberry, W. H. Sedberry, J. Bernard Sedberry, Catherine Sedberry Overall and Falley Overall, for the fixing and determining of an Attorney's fee and expenses to Jordan Stokes, Jr., for services rendered by him to Thomas G. Watkins, Trustee, to which, Answers were filed by the said Thomas G. Watkins, Trustee, and Jordan Stokes, Jr., Joseph R. West and R. H. Crockett; which Answer of said Stokes and others, was asked to be treated, if necessary, as a Cross-Petition. And to this Cross-Petition, the said J. H. Sedberry and others filed a joint answer; to all of which, reference is hereby made for greater particulars.

That upon the hearing of said petitions, answers, etc., proof orally taken before your Honor as Referee, and argument of Counsel, your Honor, as Referee, entered herein an order fixing and determining the fee of Jordan Stokes, Jr., for legal services rendered by him under his employment by the Trustee, in the sum of $10,000; and also, expenses incurred by the said Stokes, in the sum of $750.00, a copy of which order is hereto attached and made a part of this petition, marked Exhibit "A".

Your petitioners would further show unto your Honor, that the said order is erroneous in the following particulars, to-wit:

I.

That the written contract of employment entered into between your petitioner Jordan Stokes, Jr., and Thomas G. Watkins, Trustee, and approved by your Honor, as Referee, under date of August 24, 1917, is valid, provides for a reasonable fee for the services to be rendered thereunder, and the said Thomas G. Watkins, Trustee, especially when said contract was approved by your Honor as Referee, had the power and authority in law, to so contract.

II.

That your Honor, as Referee, should have allowed to Jordan Stokes, Jr., under his contract of employment with the said Thomas G. Watkins, Trustee, fifty per cent of the amount or value of assets or property recovered or secured for this estate, namely, fifty per cent of the value of the farm, title to which, by decree of the Chancery Court at Franklin, Tennessee, was placed in said Thomas G. Watkins, Trustee, the value of which has been agreed upon as $70,000, plus $24,731.14, of personal property turned over to or now held for said Trustee in Bankruptcy, as per the report of L. W. Buford and Newt.

The Petition of Jordan Stokes, Jr., etc., for a Review Cannon, Jr., Receivers, filed herein, making a total of $94,731.14

III.

That your Honor should not have held that all the Trustee was entitled to recover, or take into his possession was only an amount sufficient to pay the claims, costs, fees and expenses in bankruptcy, but that your holding should have been, that it was the duty of the Trustee in Bankruptcy to recover all property belonging to the bankrupt's estate, as the Trustee represented the bankrupt, as well as the creditors, and all other interested parties.

IV.

That the fee of $10,000 allowed by your Honor is wholly inadequate and insufficient for the services rendered by said Jordan Stokes, Jr., irrespective of the written contract between him and the said Trustee, when considered in the light of the conditions, circumstances, and facts, existing at the time of entering into the performance of said services, as well as the results obtained therefrom, the amount actually recovered thereunder and now in the hands of said Trustee in Bankruptcy subject to the exclusive jurisdiction of your Honor's Court.

V.

That your Honor should have allowed the said Jordan Stokes, Jr., as reasonable compensation, at least fifty per cent of the amount of the recovery; namely, the property now held by the Trustee in Bankruptcy and subject to the exclusive jurisdiction of this Court.

VI.

That your Honor should have allowed the said Jordan Stokes, Jr., the sum of $1127.28, as expenses incurred or paid by him in the performance of his services rendered the said Thomas G. Watkins, Trustee in Bankruptcy.

WHEREFORE, your petitioners are very much aggrieved at your Honor's order entered herein and pray that the same may be reviewed in accordance with the Acts of Congress relating to bankruptcy.

This 22 day of March, 1920.

Clarence T. Boyd,
Jno. R. Aust,
Attorneys for Petitioners.

State of Tennessee, }
County of Davidson. }

Personally appeared before me, Lee Brock, Referee, John Stokes, Jr., one of the petitioners in the foregoing petition, who makes oath that he has read the foregoing petition, knows the contents thereof, and that the same is true in substance and in fact.

Jordan Stokes, Jr.

Subscribed and sworn to before me, this 22 day of March, 1920.

Lee Brock, Referee.

EXHIBIT "A."

Final Order of the Referee (see page 185 of this transcript).

PETITION OF SEDBERRYS TO REVIEW ORDER OF REFEREE ALLOWING COUNSEL FEES—Filed March 26, 1920.

To the Honorable Lee Brock, Referee in Bankruptcy:

Your petitioners, J. H. Sedberry, the above named bankrupt, Z. C. Sedberry, both as trustee and individually, J. B. Sedberry, W. H. Sedberry, Catherine Sedberry Overall, and husband, Falley Overall, respectfully show:

That your petitioner, J. H. Sedberry, is the bankrupt named herein and your other petitioners are with the said bankrupt, the parties interested in the farm, together with the live stock, etc., thereon, located in Williamson County, Tennessee, and the conveyance of which farm in 1902 by one Zellner and wife to Z. C. Sedberry, Trustee, was attacked and set aside on July 31, 1919, in

the Chancery Court at Franklin, Tennessee, by the Trustee herein as a fraudulent conveyance.

That on the 13 day of March, 1920, an order, copy of which is annexed hereto, was made and entered herein.

That said order was erroneous in that:

1. The Referee should have held and declared the contract made and entered into between the Trustee herein and Jordan Stokes, Jr., on October 24, 1917, for an attorney's fee, champertous, and therefore illegal, null and void, and, because of such champerty and illegality have allowed nothing herein to the said Jordan Stokes, Jr., and his associates, since they found and predicated their claim for professional compensation on such illegal contract.

2. The Referee further erred in allowing the said Jordan Stokes, Jr., and associates a fee of Ten Thousand ($10,000.00) Dollars for their services herein.

Said allowance was more than was just and reasonable; if the case, on this record, was one wherein a reasonable attorney's fee was to be allowed.

3. The Referee further erred in allowing Jordan Stokes, Jr., and associates Seven Hundred and Fifty ($750.00) Dollars in a lump sum for their expenses and stenographer's fees herein, because the amount of Eleven Hundred and Twenty-Five ($1125.00) Dollars claimed for such expenses and stenographers' fees were not:

1. Professional services.
2. Are sought to be recovered under an illegal contract.
3. Are not itemized as required by the Bankrupt law.
4. And, so far as the stenographer's fees are concerned, are not further itemized as to number of folios and price per folio and are thus not shown to be within the lawful fees prescribed by the Bankrupt law.
5. Because the item of $500.00 stenographer's fees, claimed by Mr. Stokes for Miss Swain's are sought to be paid a stenographer in the regular employ of Mr. Stokes, in his law office, for work done in this bankruptcy case, for which he as attorney, is claiming an attorney's fee—which attorney's fee is or should be held to include the services of his regular office employees and assistants.
6. The Referee further erred in holding incompetent and irrelevant testimony, offered by petitioners, as to the circumstances, conditions, and agreements under which the attorneys for petitioners signed the decree at Franklin, Tennessee, in the above Chancery case, and inserted a clause therein agreeing not

to appeal. Petitioners insist such evidence was competent and material, on this question of an attorney's fee for the Trustee herein, since:

1. It shows why the Chancery case terminated successfully and quickly at Franklin without appeal.
2. It shows why the case was not litigated and what an unfortunate result might have happened to the Trustee, had it been appealed to a higher court.
3. It shows why and how the "success" in this lawsuit, which the Referee declares "was all that could have been desired" was, in point of fact, largely obtained.
4. It shows that such success came to the Trustee's attorneys in the Chancery case more as a result of agreements not observed than in the performance of services of "an unusual and difficult character."

Wherefore, your petitioners, feeling aggrieved because of such order, pray that the same may be reviewed as provided in the Bankruptcy law and the General Orders therein.

J. H. Sedberry,
Z. C. Sedberry,
J. B. Sedberry,
W. H. Sedberry,
Catherine Sedberry Overall,
Falley Overall,
By J. C. Eggleston, Attorney.

Norman Farrell,
Solr. for Petitioners.

State of Tennessee, }
County of Davidson. }

I, J. H. Sedberry, one of the above-named petitioners, do make oath and say that the statements of fact contained in the foregoing petition are true according to the best of my knowledge, information and belief and that the matters and opinions of law therein expressed I believe to be true.

J. H. Sedberry.

Subscribed and sworn to before me this 25 day of March, 1920.

W. Findlay Campbell,
(SEAL) Notary Public.

ORDER OF THE DISTRICT COURT ON PETITIONS TO REVIEW—Entered by Sanford Judge Oct. 29, 1920.

This cause came on to be heard on the petitions of J. H. Sedberry, et al., and Jordan Stokes, Jr., et al., to review an order of the referee of March 13, 1920, in the matter of allowance of compensation to counsel for the trustee in bankruptcy and the expenses of such counsel, and the same having been argued by counsel, and the court, upon consideration thereof, having handed down its written opinion thereon, it is, in accordance therewith, ordered, adjudged and decreed that the said order of the referee in bankruptcy be, and is, modified so as to allow counsel for the trustee in bankruptcy a fee of $7,500 in lieu and instead of $10,000 as allowed by the referee, and that otherwise the said order be, and is, confirmed.

Approved for entry.

Sanford, Judge.

FINDINGS OF FACT—Filed Nov. 18, 1920.

In Re:

Proposed Petition to Revise.

In response to the request of J. H. Sedberry, et al., as set forth in their petition filed November 12, 1920, that I should make and file necessary findings of fact in the matter of their proposed petition to revise in matter of law the decretal order entered herein October 29, 1920, in regard to the fees and expenses of counsel for the trustee in bankruptcy, I find that the necessary findings of fact in such matter upon which such order was based, made to appear otherwise than solely by the pleadings in the matter, are as set forth in my memorandum opinion handed

down October 29, 1920, on the petitions to review order of the referee as to fees of counsel for the trustee, on which the order in question was based. And I therefore adopt as the findings of fact now made for the purposes of the proposed petition to revise in matter of law all statements of fact contained in said memorandum opinion of October 29, 1920, with the same force and effect as if set out and incorporated *in extenso* herein.

This finding of facts will be filed by the clerk in his office.

ENLARGEMENT OF TIME.

And on the application of said J. J. Sedberry, et al., and for good cause shown, it is ordered that the time allowed by rule 34 of the United States Circuit Court of Appeals for the Sixth Circuit for the filing of the petition to revise be, and is, enlarged for a period of twenty additional days.

Edward T. Sanford,
U. S. District Judge.

This November 17, 1920.

MEMORANDUM OPINION ON PETITION TO REVIEW ORDER OF THE REFEREE AS TO FEES OF COUNSEL FOR THE TRUSTEE IN BANKRUPTCY—Filed Oct. 19, 1920.

The bankrupt's schedules under his voluntary petition in bankruptcy herein, disclosed substantially no assets, and debts of more than $18,000. Subsequently the trustee in bankruptcy, without notice to creditors, employed Counsel to institute suits to recover property of the bankrupt, upon a contingent basis, under a contract providing that such Counsel should bear the necessary expenses of the litigation and guarantee the trustee against all damages and expenses growing out of the employ-

ment, and that any property recovered for the estate should be first chargeable with the expenses incurred by Counsel and the balance, divided equally between the trustee and the Counsel. This contract was submitted to the Referee in charge of the proceedings; and the employment and contract approved by him.

Counsel thereupon instituted suit in the Chancery Court at Franklin, Tennessee, to set aside as fraudulent a conveyance of a tract of land made in 1902 to the bankrupt's wife in trust for the bankrupt, his wife and their children, and to recover said land and all the personal property and crops thereon as the property of the bankrupt. Upon final hearing the Chancery Court adjudged and decreed that this land, with the personal property located thereon, and the income and profits therefrom, was and had been the property of the bankrupt, and that his wife and children had no right or title thereto; that said conveyance was made with the intent of defrauding his existing and subsequent creditors and was void as to them and as against the trustee in bankruptcy; that the trustee in bankruptcy had title to said land and personal property which had vested in him by operation of law, and was entitled to have the land sold and the proceeds turned over to him for administration in the bankruptcy court; and that all right, title and interest in and to said land be divested out of the bankrupt and his wife and children and vested in the trustee in bankruptcy. Costs were also awarded the trustee in bankruptcy against the bankrupt and his wife; but no recovery was awarded for counsel fees.

The defendants, having no notice of the contract between the trustee and his counsel, and understanding that this decree would be satisfied upon the payment of the claims of creditors and the costs and expenses of the bankruptcy cause, including reasonable compensation to the counsel for the trustee, did not appeal from the decree. However, no definite contract was made with the trustee or his counsel to this effect; and while much proof was taken in reference to the matter of such an agreement, it is not now relied upon by any of the parties or at all material except in so far as the understanding of the defendants in reference to this matter may throw light upon their failure to appeal and the termination of the litigation in the Chancery Court.

Before any further proceedings had been taken pursuant to this decree the bankrupt with his wife and children filed a petition in the bankruptcy court praying that the court fix the amount of the provable debts of the bank-

rupt, the expenses and costs of the bankruptcy proceedings, and the reasonable attorney's fees for the trustee's counsel, and that the trustee be then directed to join with petitioners in executing a mortgage on this land to raise the necessary fund to pay off such debts, costs, expenses and fees, and the bankruptcy cause then dismissed. The trustee's counsel and counsel whom he had associated with himself pursuant to the terms of the contract with the trustee, answered this petition, setting up the contract with the trustee and praying that he be paid all his expenses incurred and as a fee one-half of the value of the property recovered under the chancery court decree. To this the bankrupt and family answered, insisting that this contract was champertous and otherwise void, and that as the trustee's counsel relied on this contract, and not on a *quantum meruit*, he was not entitled to be paid any amount whatever and the claim should be dismissed.

The referee, while of the opinion that the contract for fees was not champertous, held it otherwise unauthorized and void, but awarded the trustee's counsel fees for himself and associates, on a *quantum meruit* basis, of $10,000.00; with expenses of $750.00. Both the trustee's counsel and associates, and the bankrupt and his family, have filed petitions to review the referee's order.

The land recovered by the trustee in bankruptcy is of the agreed value of $70,000, and the personal property of the value of $29,743.01; making a total recovery of $99,743.01.

The total debts scheduled aggregated $18,260.53, which were, by consent, somewhat reduced. The total claims filed and allowed within the statutory period of one year aggregated with interest, $17,336.32. In addition there was subsequently filed and allowed a claim of D. M. Ferry & Co. of over $11,000.00, and small claims amounting to $535.85; making the total amount of the claims that had been filed and allowed at the time the referee's certificate was filed on this review, $29,409.27; while there were other claims scheduled but which had not been filed, amounting, with interest, to $2,628.97.

It was originally assumed by all parties that the fees of the trustee's counsel would have to be paid out of the general fund herein, thereby diminishing the surplus to be returned after the final administration of the bankrupt's estate for creditors; to the bankrupt or his family; and that hence the bankrupt and his family were alone adversely interested in the amount of counsel fees; the trustee, as the representative of creditors, having in fact taken the position in his pleadings that the entire fifty

per cent fee should be paid to counsel in accordance with his contract.

However, in consequence, it seems, of a doubt expressed by me at the hearing as to the correctness of this position, the attorneys for the bankrupt and his family have been allowed to file a supplemental brief in which the position is taken that the total recovery against them is in substance limited to the amount of the creditors' claims, which cannot be enlarged by the allowance of counsel fees as against them, and that in consequence, whatever fees are allowed should be paid out of the amounts coming to creditors upon their claims.

After careful consideration of the arguments and briefs, my conclusions are:

1. Under the Tennessee statutes the object of a creditors' suit to set aside a fraudulent conveyance is to subject the property, by sale or otherwise, to the satisfaction of the debts. Tenn. Code, Secs. 4288, 4290 (Shan. 6097, 6099). The property or its proceeds is merely adjudged liable to the creditors' demands, and the surplus, after satisfying such demands and the court costs, is returned to the fraudulent grantee. Bank v. Heller, 101 Tenn. 73. See form of Decree Setting aside a Fraudulent Conveyance, in Gibson's Suits in Chancery (2nd Ed.), Sec. 1015, p. 798; and 12 R. C. L. s. 155, p. 648. In such suits no fee for the complainant's attorney is awarded against the defendant as part of the costs; but if it be a general creditors' suit such fees may be allowed to be paid proportionately by the creditors out of their recovery. Douglas v. Bank, 13 Pickle (Tenn.), 148. This is in accordance with the general rule that the fees of counsel for creditors in a suit to set aside a fraudulent conveyance are to be paid out of the recovery in satisfaction of the creditors' demands and not out of the balance to be returned after the liquidation of such demands. 20 Cyc. 825. And see, in accord: Huff v. Bidwell (5th Circ.), 195 Fed. 430, 431.

2. The suit by the trustee in bankruptcy was not, however, brought under the Tennessee statute, but was prosecuted under the provisions of Sec. 70 of the Bankruptcy Act. Sub-sec. a (4), provides that the trustee in bankruptcy, upon his appointment and qualification, shall be vested by operation of law with the title of the bankrupt, as of the date of adjudication, except as to exempt property, "to all * * * property transferred by him in fraud of his creditors." And sub-sec. 5 provided that the trustee may avoid any transfer by the bankrupt of his property which any creditor might have avoided, and

"may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the adjudication."

Clearly under these provisions of the Bankruptcy Act, the trustee, under a bill to set aside a fraudulent conveyance, is not limited, as under the Tennessee statute, merely to a decree to subject the property to the payment of the bankrupt's debts, but is vested with title to the entire property and entitled to recover the entire propery or its proceeds for the purpose of administration in the bankruptcy court, as a general asset of the estate, as any other property of the bankrupt. See, by direct analogy, Globe Bank v. Martin, 236 U. S. 288, 304. This was recognized in Bunch v. Smith, 116 Tenn. 201, 216, in which it was said that it seemed that the assets recovered by a trustee in bankruptcy in a suit in the chancery court to set aside a fraudulent conveyance "would be distributed in the bankruptcy court under proper orders of the federal court." And see Barton v. Geiler, 3 Lea (Tenn.) 296. In other words, the entire property to which title is vested in the trustee and which is recovered by him is brought thereby into the bankruptcy court for administration as a general asset of the estate, just as any other property. And the fact that the property so recovered may exceed in amount the debts proven in the bankruptcy case and all costs therein, leaving a surplus to be returned to the grantee, does not prevent the entire property from coming into the bankruptcy court for administration, any more than in any proceeding in bankruptcy the fact that the bankrupt's debts may finally prove to be less than his assets, prevents the trustee from being vested with title to all his assets for the purpose of administering the estate. It is true that in Bush v. Storage Co. (C. C. Tenn.), 136 Fed. 919, there are general expressions to the effect that the trustee's right to set aside a fraudulent conveyance under Sec. 70 is not derived from the bankrupt, but is merely a transfer to the trustee of the right which the creditors would have had if bankruptcy had not occurred, and measured by such creditors rights. However, I cannot regard these expressions, incidentally used in considering an entirely different question from that here under consideration, as now controlling; especially in the light of the specific language of the Bankruptcy Act vesting title to the property fraudulently transferred, and not merely the creditors' right therein, in the trustee, and providing that the trustee shall recover the property or its proceeds.

3. And since the entire property fraudulently transferred is recovered by the trustee and brought into the bankruptcy court for administration as part of the bankrupt's estate, it necessarily follows that the fees of the trustee's counsel obtaining such recovery and realizing such assets are part of the trustee's expenses which are to be paid out of the estate as part of the "costs of administration," and entitled to preferential payment, under sec. 64, b (3) of the Bankruptcy Act, before the surplus estate, if any, is returned to the bankrupt or his vendees. See: Davidson v. Friedman (6C) 140 Fed. 853; Coll. Bank'cy (11th Ed.) 941. This is in direct analogy to the rule in cases where a preferential payment is recovered by the trustee in bankruptcy, in which the party receiving the preference is required to pay into the bankruptcy court so much of the amount received as is necessary to pay all debts of the bankrupt and all costs and expenses of the bankruptcy cause, including the fees of the trustee's counsel for services in recovering the preference, which are to be paid as part of the costs of administration. Rogers v. Page (6th Circ.), 140 Fed. 596, 606; Page v. Rogers (6th Circ), 149 Fed. 194, 195; Page v. Rogers, 211 U. S. 575, 580.

4. It results that as fees for the trustee's counsel are to be paid out of the estate recovered as part of the costs of administration, before the surplus is returned to the bankrupt and his family, the effect will be that they will be paid out of the surplus which would otherwise be so returned, and that the bankrupt and his family are, in the situation presented, the only parties now adversely interested in the matter of the fees; neither the trustee in bankruptcy nor creditors having now any actual interest therein.

5. The contract employing counsel for the trustee in reference to this matter was improvidently made. While it seems that a trustee in bankruptcy is authorized, on his own responsibility, to employ counsel and institute litigation, upon probable cause, to recover assets of the estate, the better practice, especially in reference to large and important cases, is that he should first submit the matter to creditors, and secure an order from the referee based upon their action. Coll. Bank'cy (11th Ed.), 723; Ib. Supplemental Forms, Nos. 185 and 186, pp. 1434, 1435; Hag. & Alex. Bank'cy. Forms (2nd Ed.) Nos. 187 and 188, pp. 304, 305. And see: Re Arnett (D. C. Tenn.) 112 Fed. 770. This is especially true when the litigation will be doubtful in result, the expenses heavy, and the

estate has no assets out of which the expenses can be borne.

But, however this may be, the contract by which the trustee and counsel, without notice to creditors, undertook to provide for counsel fees on a contingent basis, of one-half of the amount recovered, was, in my opinion, unauthorized and void. The compensation of counsel for the trustee in recovering assets of the estate is, as above stated, part of the trustee's expenses, to be paid as part of the costs of administration. As part of the expenses of the trustee and in the absence of other provisions for their payment, they are to be reported in detail, under oath, and "examined and approved or disapproved by the court." Bankruptcy Act, sec. 62. The amount of such fees cannot be determined by agreement between th trustee and his counsel, but must be submitted for determination by the court. Re Stemper (D. C.), 222 Fed. 690, 692; Coll. Bank'cy. (11th Ed.) 942. See Supplemental Forms No. 181 for the appointment of counsel for the trustee, Coll. Bank'cy. (11th Ed.) p. 1431, in which it is specified that the trustee's compensation be fixed and paid as an expense of administration at the final meeting of creditors.

Nor was the trustee's lack of authority to bind the estate as to the amount of counsel fees to be paid, cured by the referee's approval of the contract. The provisions of sec. 62 of the Bankruptcy Act requiring the trustee's expenses to be specifically reported for approval or disapproval by the court do not contemplate a preliminary approval by the referee before the services of counsel have been rendered or the extent or value thereof known, but an approval after they have been rendered and their extent and value can be judicially determined.

And even if the referee had been authorized to approve, in advance, an agreement for counsel fees on a contingent basis, made by the trustee as representative of the creditors, which would be binding as against the creditors represented by the trustee, in the event such fees were to be ultimately paid out of their distributive shares of the estate, it is obvious that he could in no event approve such contingent fees in advance as an allowance to be paid, as in the instant case, out of the surplus estate, that would otherwise be returned to the defendants in the proposed suit; in other words, to fix in advance by agreement between the plaintiff in the suit and his counsel the fees to be paid by the defendants in the suit. Not even the creditors themselves could by agreement with

their own counsel have thus fixed in advance the amount of fees to be paid by the defendants.

Nor is the entry made by the referee upon his minutes showing the approval of this contract now binding upon the bankrupt and his family because no petition to review this approval was filed by them within the time allowed by the rules of the court for the review of orders of the referee. The bankrupt's wife and children were not then parties to the bankruptcy cause or bound by any proceedings therein or required to take notice thereof. Neither they nor the bankrupt had any actual notice that this order had been made. And in the absence of notice of the referee's approval, made entirely exparte as to them, I am of the opinion that neither the bankrupt nor the members of his family were bound to any extent by such order or required to take any proceedings in the bankruptcy cause to review the same. This is so, regardless, of the question whether the referee's approval of the contract is to be deemed, in any event, an "order" of the referee within the provisions in reference to petitions to review.

6. The contract between the trustee and his counsel for fees upon a contingent basis being hence unauthorized and void as against the bankrupt and his family, out of whose property the fees are now to be paid, it is unnecessary to determine whether or not such contract was otherwise void for champerty. Regardless of this question, I am of opinion that, as the trustee and his counsel submitted his contract to the referee for approval, the rule of public policy enforced by some courts by which any fees are denied counsel who have made a champertous contract therefor, even if in accordance with the weight of authority or otherwise sound—questions which are not now determined—should not, in my opinion, be applied in any event, where, as in the present case, counsel have submitted the matter in advance to the judicial officer in charge of the proceedings, and having obtained his approval, have proceeded in good faith to render highly beneficial services to the estate in reliance upon the assumed legality of their contract.

And upon the whole I conclude that while the contract in question was, as stated, unauthorized and void as against the bankrupt and his family, and is not to be enforced by requiring a payment of fees of one-half of the amount of the total recovery, as therein provided, nevertheless the counsel for the trustee is entitled in equity and good conscience to an allowance of reasonable fees, upon a *quantum meruit* basis, for the services rendered

by him and his associates to the trustee, as part of the costs of administration herein.

And while it is true that counsel for the trustee and their associates have not in their pleadings sought an allowance of fees upon a *quantum meruit* basis, I am of opinion that this may be properly allowed under the prayer of the original petition of the bankrupt and his family asking the court to fix and determine such fees; and that, even independently of this matter, it is the duty of the court, upon its own motion, to fix the reasonable fees of counsel for the trustee as part of the costs of administration herein.

7. The fees allowed to counsel as part of the expenses of the administration of bankrupt estates are not to be entirely controlled by the standard of fees in cases where counsel represent private litigants under employment by them. Allowances made to counsel out of trust funds in court are, in general, to be "made with moderation and a jealous regard to the rights of those who are interested in the fund." Trustees v. Grenough, 105 U. S. 527, 536. In fixing such fees in bankruptcy proceedings there should be kept in mind the fixed policy of the Bankruptcy Act, as disclosed in the compensation fixed for referees, trustees and clerks, that bankrupt estates are to be administered with strict economy. Re Rosenthal (D. C.), 120 Fed. 848, 850; Re Goldville Mfg. Co. (D. C.), 123 Fed. 579, 584; Re Byerly (D. C.) 128 Fed. 637, 639; Re Oppenheimer (D. C.), 146 Fed. 140, 141; Re Ketterer (D. C.), 156 Fed. 719, 720; Coll. Bank'cy. (10th Ed.), 839; 2 Rem. Bank'cy., s. 2048, p. 1271; 3 Rem. Bank'cy., s. 2048, p. 627. And see: Re Kyte (D. C.), 158 Fed. 160, 161. In other cases—with the phraseology of which I do not entirely agree—it is held that the evident policy of the Bankruptcy Act required that the fees of counsel should be reduced to the "minimum" or the "lowest minimum." Re Curtis (7th Circ.), 100 Fed. 784, 792; Dunlap Hdw. Co. v. Huddleston (5th Circ.), 169 Fed. 433, 434; Re Harrison Merc. Co. (D. C.), 95 Fed. 123, 125; Re Lang (D. C.), 127 Fed. 755, 756. And see: Re Woodward (D. C.), 95 Fed. 955, 956. While the allowance to attorneys for services in administering the Bankruptcy Act should never be lavish and extravagant and should always be rigidly scrutinized, there is no reason why they should not be reasonable and adequate; it being unwise to establish a scale of compensation for services in administering bankruptcy estates at so low a rate that the best class of lawyers will refuse to practice at the bankruptcy bar. In the matter of Berkowitz, 22 A. B. R. 236.

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The controlling elements which enter into the value of such professional services are: "The nature of the services, the time necessarily employed therein, the amount involved, the responsibility assumed and the result obtained." Re Curtis (7th Cir.) *sup.*, at p. 786; Smith v. Sooper (5th Cir.), 120 Fed. 230, 232.

In determining, however, the reasonable value of the services on a *quantum meruit* basis, I am of opinion that in so far as the result of the litigation enters as an element in fixing the fees, this is to be determined by the benefit to the creditors alone and necessarily limited to the amount which will be realized by creditors upon their claims; regardless of the total amount brought into the bankruptcy court. The trustee in bringing the suit in the chancery court was acting solely as the representative of creditors, and in antagonism to the bankrupt and the members of his family. In this respect the instant case is entirely different from Meddaugh v. Wilson, 151 U. S. 333, in which the assignee in bankruptcy acted not only for the benefit of creditors, but also in the interest of the bankrupt itself in defending suits to foreclose mortgages on the bankrupt's property and protecting the property from adverse and disastrous foreclosure sales. Beyond the payment of the claims of creditors in full, neither the creditors nor the trustee as their representatives can obtain any benefit from the recovery, as the entire surplus after paying creditors' claims and the costs and expenses of administration is to be returned to the bankrupt and his family. In that surplus the creditors have no interest; and the fact that a larger amount was brought into court than was necessary to pay creditors, most of which will be returned to the defendants in the chancery suit, is of no benefit to the creditors.

In this respect the measure of the benefit from the litigation is merely the benefit to the creditors, who, as a result of this litigation, secure the payment of their debts in full. In determining this benefit, the fact that the litigation will result in bringing a large surplus fund into court for distribution, thereby increasing the fees of the officers of the bankruptcy court for services rendered in the administration, is not to be regarded as one of such benefits; it being no part of the duty of the trustee to secure assets for distribution and final return to other parties in order that the officers of the court may thereby render additional services and receive additional compensation; and it is of no benefit to the creditors that this results. And clearly the amount of the fees to be allowed to the trustee's own counsel are not to be con-

sidered as part of beneficial recovery. In other words, the amount of the allowance is not to be increased upon the theory that the result of the litigation will enable them also to recover their own fees.

I am of opinion, however, that in determining the beneficial result to creditors there should be included not only the claims which have been filed and allowed, but also those which have been scheduled by the bankrupt and not yet filed; as it would be the duty of the bankruptcy court before returning the surplus to the bankrupt and his family to take, upon its own initiative, appropriate steps for the payment of such other scheduled claims. This brings the total amount of the claims which will be paid in full—and upon which I am of opinion that interest should be allowed before the surplus is returned, under the doctrine of Johnson v. Morris, 190 Fed., *sup.*,— to approximately $32,000, including the D. M. Ferry & Co. claim. This last claim is in a peculiar attitude. Ferry & Co. had before the bankruptcy delivered certain stock turnip seed to the bankrupt under his agreement to plant and raise turnip seed therefrom, to be delivered by him to Ferry & Co. at the rate of 13½ cents per pound. This seed had been planted and crop partially raised when the petition in bankruptcy was filed. When the bill was filed by the trustee in the chancery court, he claimed as the property of the bankrupt all personal property on the land and all crops thereon. Receivers were appointed under this bill who took possession of this turnip seed as the property of the bankrupt. Thereafter Ferry & Co. filed an intervening petition in the chancery cause claiming title to the seed that had been so raised and taken possession of by the receivers. Their claim was resisted by the trustee in bankruptcy and such proceedings had that pending the litigation Ferry & Co. were allowed to take the seed upon paying the receiver 13½ cents a pound therefor in accordance with the contract, and giving bond to pay the difference between this sum and the market price thereof in the event title to the seed should be adjudged to have been in the trustee in bankruptcy. On the final hearing, title to this seed was adjudged to have been in the trustee in bankruptcy and a decree rendered against Ferry & Co. for the difference between 13½ cents per pound and 40 cents per pound, the market value of the seed, and being a sum aggregating $10,378.20. Having paid this amount to the receiver for the benefit of the trustee, they then filed in the bankruptcy case their claim for this $10,378.20 and interest as a liquidated claim against the bankrupt's estate (apparently on the theory

of damages for breach of contract caused by the action of the trustee in taking possession of the seed); and this claim, was allowed by the referee, apparently without objection. The result is that while Ferry & Co. were not creditors of the bankrupt at the time the chancery suit was brought, as the outcome of this suit and the proceedings had thereunder they were required to pay in a sum of about $11,000, thereby converting them into creditors of the estate in a like sum, which they have been subsequently allowed, with interest. Furthermore the proceedings in the chancery court were not instituted by the trustee for the benefit of Ferry & Co. as creditors, they not being creditors of the bankrupt at that time, but on the contrary were antagonistic to them and resulted in no benefit to them, but rather to their detriment, since they first had to pay into court a sum of over $11,000 and then are allowed a like recovery back as a claim against the estate, being in no better position than they were originally and onerated in the meantime with the cost and expenses of the chancery litigation and of proving their claim in bankruptcy. In determining therefore, the benefit of these proceedings to creditors, I am of opinion that the claim of Ferry & Co. is not to be included, since the chancery litigation, so far as they are concerned, resulted in a mere balancing of debts and credits, less their incidental expenses. Excluding, therefore, the Ferry & Co. claim, there remains approximately $21,000 of claims of creditors, which will be paid in full, with interest, as a result of this litigation. To this extent the creditors represented by the trustee in filing the bill have been directly and greatly benefited as a result of the chancery litigation, which has secured the payment of their claims in full, with interest, that otherwise would have remained wholly unpaid.

Unquestionably the litigation in the chancery court was ably and diligently efficiently conducted. It involved the setting aside of a fraudulent conveyance many years before. While the questions of law involved do not seem to have been very complicated, there was undoubtedly a vigorous contest, both as to the facts and the application of the law to these facts. The evidence in behalf of the trustee consisted in large part of facts ascertained on the preliminary examination in the bankruptcy proceedings of the bankrupt and members of his family; supplemented largely by other evidence in the possession of one of the creditors, who had previously instituted a suit in the chancery court to set aside this same conveyance as fraudulent—which appears inferentially to have been the

cause which precipitated the filing of the petition in bankruptcy—this creditor having been one of the principal witnesses for the trustee in the chancery suit. In addition to this, there was a considerable amount of documentary evidence, from the public records, and some other testimony. Undoubtedly, however, the preparation of the case involved a large amount of work and careful and painstaking investigation of the records and of the facts connected with the transactions in question, which had extended over a large number of years and the outside investigation of many matters which did not result in the obtaining of direct testimony. The actual hearing in the Chancery Court occupied only two days; and there was, as stated, no appeal from the decree.

It is of little avail to review the many adjudged cases in which counsel fees have been allowed in bankruptcy proceedings, as each case must depend, in the last analysis, upon its own peculiar facts. The closest analogy is found in the litigation growing out of the bankruptcy of one Merriman in the District Court of Chattanooga. There a plenary suit was filed by the trustee in bankruptcy to recover a preference, amounting, with interest, to approximately $71,000. A recovery was had in the District Court. On the first appeal to the Circuit Court of Appeals, it was held that the defendant should be required to pay in on this decree only such amount as might be necessary to pay all the debts proven in the bankruptcy cause and the costs and expenses of the bankruptcy cause, including the counsel fees of the trustee. Rogers v. Page (6th Circ.), 140 Fed. 596, 606. The District Court, for the purpose of ascertaining the amount to be thus paid by the defendant, fixed the trustee's counsel fees at the sum of $15,000. The total amount of claims and costs and expenses, including these fees, was then approximately $78,000. On the second appeal, the Circuit Court of Appeals said that it was not altogether prepared to approve of the large compensation allowed counsel "in view of the strong admonition in the direction of economy found in the bankruptcy law," but that as the total liability of the defendant was about $7,000 less than the aggregate debts, expenses and costs, and only about one-half of the counsel fees would be paid by the creditors, who were not complaining, they were not willing to hold that, as against the defendant, this allowance was excessive to the extent of more than one-half. Page v. Rogers (6th Circ.), 149 Fed. 194, 195. On appeal to the Supreme Court, that court said that while the fee appeared to be large, it seemed that the proper place to raise this question would

be in the bankruptcy court, and that in any event it would be unwilling to reverse the judgment of the lower courts in view of their more intimate acquaintance with the services rendered. Page v. Rogers, 211 U. S. 575, 581. The subsequent proceedings in reference to this matter were had before me in the bankruptcy cause. There I held that the original allowance of $15,000 in the plenary suit was merely a tentative one fixing a maximum fee for the purpose of determining the amount that the defendant was required to pay into the bankruptcy court. It then appeared that after deducting all costs and expenses, including attorney's fees, there would be realized about $68,000 for distribution among creditors; of which about 48 per cent would be returned to the defendant as a dividend upon his claim against the estate arising out of the setting aside of the preference—which he had been allowed to prove in accordance with the opinion of the Supreme Court (p. 581)—and about 52 per cent would go as dividends to the other general creditors of the bankrupt, that is, there would be approximately $35,000 for distribution among other creditors than the defendant himself. And upon careful consideration, I finally approved the compensation of the trustee's counsel which had been fixed by the referee, at the sum of $11,500. Mem. op. In re I. B. Merriam, Bktl. No. 517 in Bankruptcy at Chattanooga, August, 1909. That is to say, the creditors represented by the trustee recovered through this litigation which twice went to the Circuit Court of Appeals and once to the Supreme Court, approximately $35,000 for distribution among the creditors whom they represented, excluding the defendant who was made a creditor by the setting aside of his preference; and in this situation a fee of $11,500 or approximately 33⅓ of the amount recovered for the benefit of the other creditors, was allowed as a fee to counsel. In that case, however, there were other funds in the bankruptcy cause with which the reasonable fee of counsel could have been paid in any event, and they were not wholly dependent for the recovery of fees upon the success of the litigation, nor did they assume or pay any of the expenses of the litigation, there being other funds in the bankruptcy court applicable likewise to that purpose. In the present case, however, in the event the suit in the chancery court had been unsuccessful, counsel for the trustee would have obtained no fees whatever, and would not in addition have been reimbursed for any of the expenses which they incurred in the prosecution of the litigation, which amounted to a considerable sum.

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After careful consideration, under all the circumstances of this case and in view of the diligence and skill with which this litigation was conducted and its highly beneficial result to creditors, I am of opinion that the sum of $7,500 would be reasonable compensation to the counsel for the trustee for the services rendered by himself and his associate counsel. The order of the referee will accordingly be modified so as to fix his compensation at this sum.

8. Counsel for the trustee also claimed an allowance of $1,127.28 for expenses. The referee held that these expenses were not properly itemized and that he could not ascertain just what amount was chargeable as part of the cost and expenses, but stated that if they were to be passed upon in a lump sum, an order might be entered allowing such expenses in the sum of $750.00, or that if desired by counsel proper itemizing of the expenses might be made and they would then be passed upon by him. Counsel for the trustee did not submit any other itemization of their expenses and the bankrupt and his family did not request further itemization; and the referee thereupon allowed the expenses in the lump sum of $750.00.

Sec. 62 of the Bankruptcy Act provides, as above seen, that the actual and necessary expenses incurred by officers in the administration of estates, shall, except where other provisions are made for their payment, be reported in detail, under oath, and examined and approved or disapproved by the court. This applies to the expenses of counsel which are part of the costs and expenses of the trustee and allowed as such. The expenses in question were merely proven in the form of a general statement of expenses filed as an exhibit to the deposition of counsel. Outside of certain minor items they were not reported in detail, as required by the Bankruptcy Act. Two of the chief items consisted merely of general statements as to $500 paid to a stenographer for services described in very general terms, and $500.00 for traveling expenses, etc., of counsel and his associates likewise stated in very general terms, without itemization. I am of opinion, however, that none of the parties are in a position to now make objection to the order of the referee in this respect. The trustee and his counsel cannot rightly complain because these expenses were not properly itemized and they did not offer to make any further itemization after this objection had been pointed out by the referee. On the other hand the bankrupt and his family were not in a position to complain as they did not avail themselves

of the privileges offered by the referee of requiring a further itemization of these expenses before they were passed upon. As both sides have seen proper to leave the matter of expenses in this condition, I find no ground for now modifying the order of the referee in reference thereto.

A decree will accordingly be entered modifying the referee's order so as to allow counsel fees in the sum of $7,500 only, and otherwise confirming the same.

Sanford, Judge.

REQUEST TO DISTRICT JUDGE, FILED BY JORDAN STOKES, JR., JOS. R. WEST, R. H. CROCKETT AND THOMAS G. WATKINS, TRUSTEE, FOR FINDINGS OF FACT, APPEARING OTHERWISE THAN BY THE PLEADINGS—Filed Nov. 17, 1920.

To the Honorable Edward T. Sanford, District Judge:

NOTICE OF INTENTION TO FILE PETITION TO REVISE.

In this cause, your Honor filed a written memorandum opinion on the Petitions to Review filed by Thomas G. Watkins, Trustee in Bankruptcy, Jordan Stokes, Jr., Joseph R. West and R. H. Crockett, and one subsequently filed by the bankrupt and members of his family, both petitions seeking to review an order of the Honorable Lee Brock, Referee in Bankruptcy, upon the question of allowance of Attorney's fees and expenses to Jordan Stokes, Jr., and associates.

In conformity with Rule 34 of the Circuit Court of Appeals for the Sixth Circuit, and Rule 59 of this Court, we file this written notification of the intention of Thomas G. Watkins, Trustee in Bankruptcy, Jordan Stokes, Jr.,

Request to District Judge

Joseph R. West and R. H. Crockett, to file a Petition to Revise the order entered in this Court on October 29, 1920, which order modified the order of the Referee and allowed $7500.00 Attorney's fees to petitioner Stokes, and $750.00 for expenses.

Your Honor filed a written memorandum opinion, embodying the findings and conclusions of your Honor, both as to the law and facts in this matter. However, out of abundant precaution, and in compliance with Rule 59 of this Court, and Rule 34 of the U. S. Circuit Court of Appeals for the Sixth Circuit, Rule 59 being as follows:

> "Notice in writing given by any party to the District Judge under clause 2, of Rule 34 of the United States Circuit Court of Appeals for the Sixth Circuit, that he intends to file a petition to revise in matters of law an order of the Court in a proceeding in bankruptcy and deems findings of fact to be necessary, shall be filed in the office of the Clerk for transmission to the Judge, and shall contain (a) a statement of the errors of law to be assigned as the grounds for revision, and (b) a statement of the facts appearing otherwise than by the pleadings involved in such order or upon which it depends, that are deemed necessary to the determination of said assignments of error."

(a)

As Attorneys for Thomas G. Watkins, Trustee of this estate, Jordan Stokes, Jr., Jos. R. West and R. H. Crockett, I herewith give notice that it is their purpose to file a petition to revise the order of your Honor, hereinbefore referred to, and that they will rely on the following errors of law, as their assignments, for a reversal of your Honor's judgment and order.

ASSIGNMENTS OF ERROR.

I.

The Court erred in holding that the contract of employment made by Thomas G. Watkins, Trustee in bankruptcy, with petitioner Jordan Stokes, Jr., and which contract was subsequently approved by the Referee in Bankruptcy, was improvidently made, or unauthorized, and therefore invalid.

II.

The Court erred in holding that the order entered by the Referee in Bankruptcy in this cause, approving the contract made by Thomas G. Watkins, Trustee in Bankruptcy, with Jordan Stokes, Jr., was not an order of the Referee within the provisions of the Bankruptcy Act and the law in reference to petitions to review.

III.

The Court erred in holding that the D. M. Ferry & Co. claim should not be included in the debts or claims properly provable in bankruptcy, upon which to determine the allowance of Counsel fees for services rendered the Trustee in bankruptcy in this cause.

IV.

The Court erred in holding that the allowance of Counsel fees to the Trustee in Bankruptcy in this cause, should be based upon the amount of claims provable and filed in this cause, and not upon the total amount of the recovery, or assets coming into the hands of the Trustee in bankruptcy.

V.

The Court erred in holding that petitioners Jordan Stokes, Jr., Joseph R. West and R. H. Crockett, were only entitled to a fee of Seven Thousand Five Hundred ($7,500) Dollars for services rendered Thomas G. Watkins, Trustee in Bankruptcy herein, on a quantum meruit basis.

VI.

The Court erred in holding that petitioners Jordan Stokes, Jr., Joseph R. West and R. H. Crockett were only entitled to expenses incurred by them, in the sum of Seven Hundred and Fifty ($750) Dollars.

VII.

The Court erred in holding that notice to J. H. Sedberry and his family of the making of the contract between the Trustee in Bankruptcy and said Stokes, was necessary, and that for the absence of such notice, neither the bankrupt nor the members of his family were bound to any extent by said contract.

VIII.

The Court erred in failing to find and hold that said contract between said Trustee in Bankruptcy and said Jordan Stokes, Jr., which contract was approved by the Referee, was valid and binding, and that said Stokes was entitled to be paid the expenses advanced by him in full, and the fee therein contracted, to-wit: one-half of $99,000, after deducting the costs and expenses advanced by him, as provided in said contract.

(b)

STATEMENT OF THE FACTS APPEARING OTHERWISE THAN BY THE PLEADINGS.

On August 24, 1917, J. H. Sedberry (bankrupt) filed a voluntary petition in bankruptcy, scheduling no assets whatsoever, other than a small amount of real estate encumbered for more than its value, and some personal property which was claimed by the bankrupt to be exempt, under the Statutes of the State of Tennessee: In effect, scheduling no assets.

Upon this voluntary petition, J. H. Sedberry was duly adjudged a bankrupt.

On September 10, 1917, petitioner Thomas G. Watkins was elected by the creditors and appointed by the Court, Trustee in Bankruptcy, qualified, and has been acting as such since that time.

After the election of petitioner Watkins as Trustee, he, as Trustee, employed petitioner Jordan Stokes, Jr., an Attorney of the Nashville Bar, to represent him in making a preliminary investigation and examination as to whether there was any likelihood of discovering concealed assets, or recovering any property belonging to this estate.

After the employment of petitioner Stokes by the Trustee, petitioner Stokes associated petitioner Jos. R. West, an Attorney of the Nashville Bar, to assist him in making the investigations and conducting the examinations. In making investigations as to concealed property, petitioners Stokes and West left their offices in Nashville, Tennessee, and had to go to Franklin and Thompson Station, Tennessee, the latter place being the former residence of the bankrupt. Such investigations involved the careful examination of the bank account of Mrs. Z. C. Sedberry, Trustee, wife of the bankrupt, making copies of this entire account, examining all checks, notes and

other transactions that could be secured from the bank wherein said account was kept, examining records of the Register's Office of Williamson county, and other public offices in Franklin, Tennessee, and interviewing a number of witnesses as to the acts and conduct of the bankrupt generally with regard to the farm located in Williamson County, Tennessee.

Such investigations entailed examinations dating back to 1890, and from that date on down to 1917.

As a result of such investigations, petitioners Stokes and West advised the Trustee that they thought that a general examination of the bankrupt and members of his family should be had; and the Trustee stated that he had no assets to pay stenographic charges for the taking of said examinations, or to pay marshal's costs for summoning the parties. Petitioner Stokes, thereupon, at the request of petitioner Watkins, Trustee, stated in open Court, that he would advance the expenses of having the marshal subpoena the bankrupt and members of his family, and the stenographic charges incident to the general examination of the bankrupt, in order to develop whether the bankrupt was fraudulently concealing and hiding out property that rightfully belonged to this estate.

Petitioner Stokes did assume and pay the marshal's costs for summoning the bankrupt and members of his family, and paid stenographic charges incident to the general examination, which examination was conducted by petitioner Stokes.

In the general examination of the bankrupt, he was interrogated with particular reference to who was the owner of a farm located in Williamson County, Tennessee, and the products and income derived therefrom, and the personal property located thereon. The examination of the bankrupt and certain members of his family was taken in shorthand and transcribed, and has been introduced in evidence in this matter. From an examination of such examination, it appears that the testimony of the bankrupt was evasive, and that he sought to keep from giving any information with reference to any property belonging to him which he had concealed and hidden out, and not scheduled.

The general examination of the bankrupt and the members of his family was conducted entirely with regard to who was the actual owner of the farm located in Williamson County, the deed to same having been made by W. J. Zellner and wife, to Z. C. Sedberry, Trustee, under date of January 1, 1902, by the terms of which deed the farm was conveyed to Z. C. Sedberry, Trustee, for herself, her husband and the following children: W.

H. Sedberry, J. B. Sedberry and Catherine Sedberry, and such other children as might thereafter be born. With the power reserved in Z. C. Sedberry, Trustee, to sell said property. However, by the terms of said deed, J. H. Sedberry had to join in the conveyance.

As stated, such deed was dated January 1, 1902, a matter of more than 15½ years prior to the filing of the voluntary petition in bankruptcy in this matter.

The general examination of the bankrupt and the members of his family, was conducted with reference to the same identical property that was afterwards recovered by the Trustee, as the result of the efforts of petitioners Stokes and associates.

The employment of petitioner Stokes by the Trustee to conduct an investigation, including a general examination of the bankrupt and the members of his family, was with the understanding that petitioner Stokes' remuneration, if any, for his services would be upon a contingent basis. The exact amount was, however not agreed upon until after the investigation and general examination.

Petitioner Thomas G. Watkins, Trustee in bankruptcy, filed a Petition before the Honorable Lee Brock, Referee in Bankruptcy, for authority to employ Counsel. A copy of said Petition is hereto attached and made a part hereof, as Exhibit "A."

Upon this petition, the order of the Referee was entered, on the 24 day of Oct., 1917. A copy of said Order of the Referee is hereto attached and made a part hereof, as Exhibit "B."

Pursuant to the petition and order, petitioner Thos. G. Watkins, Trustee in Bankruptcy, entered into a contract with petitioner Jordan Stokes, Jr. A copy of said contract is hereto attached as Exhibit "C."

This contract was approved by the Honorable Lee Brock, Referee in Bankruptcy for this District, to whom this cause had been referred, under a general reference, at the time the voluntary petition in bankruptcy was filed, and before whom the adjudication in bankruptcy of this bankrupt was had.

The following Minute entry appears upon the Minute Book of Lee Brock, Referee, in Bankruptcy.

> "Trustee's Petition to employ Counsel, and Order thereon, filed October 24, 1917, Minute Book 57, page 27."

After the signing of the contract of employment, petitioners Stokes and West filed a Bill in the Chancery Court

at Franklin, Tennessee, to recover the identical property about which the bankrupt and the members of his family were examined. A copy of said Bill is hereto attached and made a part hereof as "Exhibit D."

L. W. Buford and Newt. Cannon, Jr., were appointed Receivers of the property set out in the Bill filed by the Trustee, through petitioners Stokes and West.

After the filing of the Bill in the Chancery Court at Franklin, the following defendants filed Answers: The bankrupt J. H. Sedberry, Mrs. Z. C. Sedberry, J. B. Sedberry, W. H. Sedberry, Catherine Sedberry Overall and Falley Overall, the Williamson County Banking & Trust Company, J. C. Eggleston and J. F. Eggleston. Pro-confessos were taken against the other defendants.

At the time of the filing of the Bill and the filing of the voluntary petition in bankruptcy, by J. H. Sedberry, a crop of turnip seed was being grown upon this farm, D. M. Ferry & Co., of Detroit, Mich., having a contract with the bankrupt under the terms of which Ferry & Co. were to receive all of the seed grown, and pay therefor 13½ cents per pound. The Trustee declined to carry out this contract, as at the time of harvesting said seed, they had advanced to about 40 cents per pound; the reason being that possibly the Chancellor at Franklin might decree that the Trustee was entitled to the personal property and growing crops upon the farm, on account of the conduct and exercise of ownership over such crops and personal property by the bankrupt, and at the same time deny recovery as to the farm or real estate itself; in which event the D. M. Ferry Company's claim for the difference between 13½ cents per pound and 40 cents per pound would become very material because there would not be sufficient to pay the creditors in full. In which event D. M. Ferry & Co. would only receive their pro-rata distribution.

D. M. Ferry & Co. filed a petition in said cause in the Chancery Court at Franklin, Tennessee. Demurrers were filed to this petition, and as a result of such demurrers Ferry & Co. amended their petition and sought to claim the seed as the property of the bankrupt's wife, Z. C. Sedberry, Trustee, through J. H. Sedberry acting as Agent, the contract being signed with Ferry & Co. by J. H. Sedberry.

To the Amended Petition Demurrers were filed. These demurrers were argued at length before the Court, and as a result, Ferry & Co. were required to pay the contract price for said turnip seed and execute bond, conditioned to pay the market value of said turnip seed as

of the date of the entry of the decree; in no event to be less than forty cents per pound.

As a result of this, Ferry & Co. paid at the time $5,260.00 to the Receivers of the Chancery Court proceedings, and executed bond for $21,000.00 to pay the difference in price.

The title to the said turnip seed was decreed by the Court to be in the Trustee in Bankruptcy, and therefore Ferry & Co. only had an unsecured claim against the Trustee of this bankrupt, on account of the breach of his contract and judgment was rendered in the Chancery Court proceedings against Ferry & Co. for the difference between the contract price and the market price. And as stated, they were entitled to prove their claim for the damages resulting to them on account of the breach of this contract, such contract being entered into prior to bankruptcy.

Much investigation was made by petitioners Stokes and West, with regard to securing evidence as to statements made by the bankrupt prior to, at, or about the time of the execution of the Zellner deed on January 1, 1902, a matter of 15½ years before the voluntary petition in bankruptcy was filed. Certain depositions were taken, proving these facts and statements.

A complete transcript of the entire proceedings in bankruptcy, including the examination of J. H. Sedberry, Mrs. Z. C. Sedberry, W. H. Sedberry and George Sedberry was made, and was filed and used as a part of the evidence in the Chancery Court case of Thos. G. Watkins, Trustee vs. J. H. Sedberry, et al. Such record being introduced and read as evidence in said cause.

Copies of many instruments appearing in the Register's Office, and County Court Clerk's Office of Williamson County, were likewise made and used as evidence in said Chancery Court cause.

Petitioners Stokes and West had to make many trips to Franklin and Thompson Station, and surrounding territory, and petitioner Stokes associated petitioner R. H. Crockett, as associate counsel with him, petitioner Crockett being a member of the Franklin Bar.

The defendants took certain depositions and the case was ready for trial.

The proof introduced in the Chancery Court case at Franklin, developed the following facts:

At the time the bankrupt and his wife, Mrs. Z. C. Sedberry were married, his wife had no property or funds of any kind, character or description. After her marriage, the only property or funds she ever received

were funds received by her from her husband, the bankrupt, J. H. Sedberry.

In 1893, the bankrupt, J. H. Sedberry was transacting all his business as J. H. Sedberry, Agent, claiming to act as Agent for his mother. J. H. Sedberry, prior to bankruptcy, never acted as Agent, nor had he acted as J. H. Sedberry, Agent, for any one other than his mother. When interrogated in his general examination as to what duties or acts he performed as Agent for his mother, the only acts of agency that he could show was that he borrowed money from his mother.

About 1893, J. H. Sedberry (bankrupt) was in business with W. H. Timmons. W. H. Timmons lost money, and J. H. Sedberry (bankrupt) got the profits.

In 1898, J. H. Sedberry (bankrupt) was doing business as J. H. eSdberry, Agent, claiming to be Agent for his mother, and stated to J. T. Stovall, that his reason for doing business as Agent, was, on account of a claim or debt that W. H. Timmons had against him, and that he would continue to do business as Agent as long as Timmons had the claim against him.

In 1898, J. H. Sedberry, the bankrupt, stated to J. T. Stovall with reference to a piece of property standing in the name of Z. C. Sedberry, Trustee, that he had put his property in his wife's name on account of the Timmons claim or debt. The amount of the Timmons debt was about $12,000.

The income from the farm and real estate involved in the Chancery Court case, was mingled and kept by J. H. Sedberry, the bankrupt, and no separate account whatsoever was kept of any funds arising therefrom.

Prior to January 1914, despite the fact that the date of the deed to this farm to Z. C. Sedberry, Trustee, was January 1, 1902, there was no account in bank, or account kept of any nature, in the name of Z. C. Sedberry, Trustee.

For three or four years prior to November 2, 1914, J. H. Sedberry (bankrupt) transacted business in his own name, depositing funds from the farm to his own individual credit.

About 1907, J. H. Sedberry, the bankrupt, stated to T. J. Timmons that he had his head above water now, and could use his own name.

On November 2, 1914, J. H. Sedberry (bankrupt) opened a bank account in the Williamson County Banking & Trust Company, in the name of Z. C. Sedberry, Trustee, *subject to check, J. H. Sedberry.* Practically all checks against this account were signed by J. H. Sed-

berry, using the signature, Z. C. Sedberry, Trustee, and J. H. Sedberry signed that name. Out of this account J. H. Sedberry (bankrupt) paid his own personal obligations. Whenever Mrs. Z. C. Sedberry drew a check upon this account in the Williamson County Banking & Trust Company, instead of signing it Z. C. Sedberry, Trustee, she signed the checks J. H. Sedberry, By wife.

J. H. Sedberry (bankrupt) himself borrowed the money from his, J. H. Sedberry's father, with which to buy the farm involved in the Chancery Court case, the title to which was afterwards decreed to be in the Trustee of this estate.

J. H. Sedberry admitted that he had the deed to this farm made as it was, because he would doubtless fail and owe debts.

Mrs. Z. C. Sedberry concedes, in her general examination, that J. H. Sedberry (bankrupt) was, to all intents and purposes, and in every respect, exercising all rights of ownership over said farm and personal property located thereon, and the proceeds received therefrom.

The bankrupt, J. H. Sedberry, in his general examination, stated that he had *never* claimed any of the personal property located on this farm. Registered mortgages were introduced showing that large amounts of the personal property located on this farm were mortgaged by J. H. Sedberry, in his name, on October 12, 1914, on October 25, 1913, and in said mortgages he refers to the place where said personal property is located as—my place, which I now own.

The bankrupt J. H. Sedberry also mortgaged a traction engine on October 19, 1912, which traction engine was located on said farm. And again, on July 2, 1912, he mortgaged a threshing machine.

All of said mortgages were executed by J. H. Sedberry in his own name, without anyone joining.

These mortgages upon the personal property located on this farm consisted of stock, machinery, implements and quite a variety of personal property.

W. H. Sedberry, the only son or child who was introduced, or whose testimony was taken, stated positively that he had no interest in this farm, or any property located thereon. All of the children named in the Zellner deed, or that could by any possibility have any interest in the farm in question, are of age.

The record discloses that J. H. Sedberry, the bankrupt, owed debts from 1893, or thereabouts, on down to bankruptcy, and that he was hiding his property and concealing it.

Request to District Judge

The deed from W. J. Zellner and wife to Z. C. Sedberry, Trustee, which was attacked in the Chancery Court proceedings by the Trustee, was dated January 1, 1902. A copy of said Deed is hereto attached and made a part hereof as Exhibit "E."

The bankrupt, J. H. Sedberry, on December 30, 1916, received in settlement of his mother's estate, which was made during his mother's lifetime, two notes of $1,000 each. One of these notes he discounted and received certain mules therefor, which he did not schedule. However, they were located upon this farm on August 24, 1917, the date he filed his petition in bankruptcy. The other $1,000 note, J. H. Sedberry, the bankrupt, claims to have transferred to Z. C. Sedberry, Trustee. Mrs. Z. C. Sedberry, Trustee, however, stated that this note was never transferred to her.

The Chancellor of the Chancery Court of the State of Tennessee, at Franklin, Tennessee, adjudicated that the real title to the farm covered in the Zellner deed, and the property located thereon, and the income and profits thereof was and had been in defendant J. H. Sedberry (bankrupt) from the time of the taking of said deed, namely, January 1, 1902, and that upon the bankruptcy of defendant J. H. Sedberry, and the appointment and qualification of his Trustee, the complainant in this cause, the title to this property passed to and vested in Thos. G. Watkins, Trustee in bankruptcy of J. H. Sedberry, by operation of law. And in this final decree of the Chancellor, all claim, right, title or interest that any parties have in and to this land, or any of the personal property thereon, is divested out of them and vested absolutely in petitioner, Thomas G. Watkins, Trustee in Bankruptcy.

Copy of the final decree of the Chancellor in the Chancery Court case at Franklin, Tennessee, is hereto attached and made a part hereof as Exhibit "F."

The following Attorneys of the Nashville Bar testified that the compensation provided for in the contract between petitioner Stokes, and the Trustee, was reasonable, and that petitioner Stokes should be paid one-half of the amount of the property recovered by him. Such Attorneys were:

Judge Joseph C. Higgins,
Mr. Jordan Stokes, Sr.,
Mr. R. B. C. Howell,
Mr. Walter Stokes,
Mr. Frank A. Berry,

Request to District Judge

Mr. R. T. Smith,
Mr. Harry A. Luck,
Mr. Jordan Stokes, Jr.,
Mr. R. H. Crockett,
Mr. Jos. R. West.

The following Attorneys testified that 50% of the amount of the property recovered for this estate, namely, 50% of $97,943.01, would be reasonable compensation, under all the facts and circumstances as they existed at the time petitioner Stokes accepted employment, as upon a quantum meruit, in the absence of a contract:

Mr. Jordan Stokes, Sr.,
Mr. R. B. C. Howell,
Mr. Walter Stokes,
Mr. F. A. Berry,
Mr. R. T. Smith,
Mr. Harry A. Luck,
Petitioner Jordan Stokes, Jr.,
Petitioner R. H. Crockett,
Petitioner Jos. R. West.

Judge Jos. C. Higgins testified that the fee should not be, under any circumstances, less than $30,000.00.

In obedience to Rule 34 of the U. S. Circuit Court of Appeals for the Sixth Circuit, and Rule 59 of this Court, we file this notice and request the Court to find the facts as herein contained.

This November 17, 1920.

Respectfully submitted,
Jno. R. Aust
Clarence T. Boyd
Attorneys for Petitioners.

Thos. G. Watkins, Trustee,
Jordan Stokes, Jr.,
Joseph R. West,
R. H. Crockett.

EXHIBIT "A"

Petition of Thos. G. Watkins, Trustee, to employ Counsel. (See p. 12 this transcript.)

EXHIBIT "B"

Order of Referee on Petition to Employ Counsel.
(See p. 13 this transcript.)

Order of District Judge Adopting His Opinion

EXHIBIT "C"

Contract of Employment between Thos. G. Watkins, Trustee, and Jordan Stokes, Jr.
(See p. 14 this transcript.)

EXHIBIT "D"

Original Bill, Chancery Court case, Franklin, Tenn.
(See p. 16 this transcript.)

EXHIBIT "E"

Deed from W. J. Zellner and wife to Mrs. Z. C. Sedberry, Tr.
(See p. 31 this transcript.)

EXHIBIT "F"

Final Decree, Chancery Court, Franklin, Tenn.
(See p. 62 this transcript.)

ORDER OF DISTRICT JUDGE ADOPTING HIS OPINION AS HIS FINDINGS OF FACT—Entered Nov. 19, 1920.

FINDINGS OF FACT IN RE:
PROPOSED PETITION TO REVISE,
OF JORDAN STOKES, JR., ET AL.

In response to the request of Jordan Stokes, Jr., et al., for findings of fact in the matter of their proposed petition to revise in matter of law the decretal order entered October 29, 1920, in regard to the fees and expenses of counsel for the trustee in bankruptcy, I find that the necessary findings of fact in such matter, made to appear

otherwise than solely by the pleadings in the matter, are as set forth in my memorandum opinion handed down October 29, 1920, on the petitions to revise the order of the referee as to fees and expenses of counsel for the trustee, on which the order in question was based. And I therefore adopt as the findings of fact now made for the purposes of the proposed petition to revise all statements of fact contained in said memorandum opinion of October 29, 1920, with the same force and effect as if set out and incorporated in *extenso* herein.

This findings of fact will be filed by the clerk in his office.

This November 19, 1920.

Edward T. Sanford,
U. S. District Judge.

ORDER OF THE DISTRICT JUDGE ON REQUEST OF THOS. G. WATKINS, TRUSTEE, JORDAN STOKES, JR., JOS. R. WEST, AND R. H. CROCKETT, FOR FINDINGS OF FACT, APPEARING OTHERWISE THAN BY THE PLEADINGS— Filed Nov. 20, 1920.

MEMORANDUM AS TO FINDINGS OF FACT ON PROPOSED PETITION TO REVISE BY JORDAN STOKES, JR., ET AL.

I have today received notice filed by Jordan Stokes, Jr., et al., of their intention to file a petition to revise in matter of law the decretal order entered herein on October 29, 1920, in the matter of fees and expenses of counsel for the trustee in bankruptcy, with a request that I make a findings of fact therefore. They set out in this request the findings of fact requested. This proposed findings of fact embraces some matters appearing by the pleadings, some matters of evidence merely, and some

statements of fact as to matters not determined by me as the basis of the order in question.

I have recently had occasion to consider the purpose and effect of cl. 2 of rule 34 of the Circuit Court of Appeals in reference to the findings of fact to be made by the District Judge on a proposed petition to revise, and have reached the following conclusions in regard thereto:

Such findings of fact is intended to include only the facts involved in the order which it is sought to revise or upon which the order depends; and it is necessarily to be limited to the facts relative to the matters of law as to which it is sought to revise the order, without extending to the facts at large so as to include other matters not germane to these matters. Furthermore this rule does not, as I construe it, imply that the District Judge shall set out all the evidence in the case on conflicting questions of fact or upon matters which the court did not determine, such as would appear in a summarized statement of the evidence if the order were to be taken up for review by appeal where questions of fact as well as of law are to be passed upon by the Circuit Court of Appeals, but merely implies that the District Judge shall file his findings as to the ultimate facts, as distinguished from matters of evidence merely, that were found by the court and upon which the order was in fact based, in order that the Circuit Court of Appeals, without reviewing the evidence, may determine whether or not on the ultimate facts so found the order based thereon was erroneous in matter of law. This I understand to be the purpose of the rule of the Circuit Court of Appeals. See my memorandum opinions in Re DeCamp Glass Casket Co., No. 2,445 in bankruptcy at Chattanooga, July, 1920, and in Re Hitt Lumber & Box Co., No. 2,252 in bankruptcy at Chattanooga, September, 1920.

I therefore cannot make the proposed findings of fact submitted in behalf of the proposed petitioners, which involve not only various evidential matters, but also alleged facts upon which I did not pass as a basis for the order in question; whose determination is not, in my opinion, material, and the settlement of which would now require a further and detailed consideration of evidence as to matters that were not involved in the making of the order in question. However, in view of the fact that the memorandum opinion handed down by me on October 29, 1920, in reference to the matter of fees and expenses of counsel for the trustee in bankruptcy fully set out all the ultimate facts, not appearing from the pleadings, found and determined by me, upon which the order in

question was based, and in order to avoid unnecessary repetition, I shall make and file a findings of fact adopting by reference the statements of fact in reference to this matter contained in said memorandum opinion. And in this connection I note that this memorandum opinion is specifically described in the petitioners' request for findings of fact as "embodying the findings and conclusions of (the court), both as to the law and facts in the matter"; further findings being only requested, as petitioners state, "out of abundant caution."

Edward T. Sanford,
U. S. District Judge.

This November 19, 1920.

CLAIM AND PETITION OF D. M. FERRY COMPANY
—Filed Sept. 22, 1919.

TO THE HONORABLE LEE BROCK, REFEREE:

The D. M. Ferry Company, a corporation, presents and files this petition as its proof of claim in this cause and respectfully shows:

I

That on April 7, 1917, J. H. Sedberry made to it a written proposition in regard to the planting of and sale to it of certain turnip seed. Said contract and acceptance thereof are as follows:

"Thompson Station, Tennessee,
April 7, 1917.

D. M. Ferry & Co.,
Detroit, Michigan.

Gentlemen:

I, J. H. Sedberry of Thompson Station, Tennessee, in consideration of the covenants on your part herein-

after mentioned, agree to plant sufficient seed ordinarily to produce the quantity mentioned below of the variety of seeds and, if the season permits, to deliver them to you on or before September 1, 1918, in good, merchantable order, well cured and cleaned, true to name, of high germination and suitable in every respect for seed purposes, free on board cars at Thompson Station, Tennessee.

It is a condition of this agreement that in the event of a short crop I am to fill pro rata all contract orders taken from my various customers in advance of the planting of the kind of seed mentioned herein.

Stock seeds if supplied by you, are to be charged to me at the same price as I am to receive from you for the crop; stock seeds are to be paid for at the time of payment by you for the crop.

You agree in consideration of the proper fulfillment of my obligations herein undertaken to pay for the seeds mentioned at the price named below, net cash upon acceptance and completion by you of satisfactory tests of germination.

This letter when accepted by you, shall constitute our contract and be construed according to Michigan laws.

100,000 lbs. TURNIP, Seven Top at $0.13½ per lb.

J. H. Sedberry.

Accepted at Detroit, Michigan, this 9th day of April, 1917.

D. M. Ferry & Co.,
Kirby B. White,
Secretary."

The original of said contract is in the possession of W. E. Norvell, Jr., one of the attorneys for the petitioner and will be produced at the hearing or sooner, if demanded.

II

That subsequently in July, 1917, your petitioner furnished stock seed to the said J. H. Sedberry as provided in said contract.

That in pursuance of the terms of said contract, J. H. Sedberry planted said seed upon a farm near Thompson Station, Tennessee, where the contract contemplated that said seed should be planted, which had been occupied by himself and family for many years and title to which stood in the name of Z. C. Sedberry, Trustee.

III

That about the time said seed had been planted, the said J. H. Sedberry filed a voluntary petition in bankruptcy in this Court.

That at the time of the making of the said contract, of the furnishing of said stock seed and at all times prior to the filing of said petition in bankruptcy, the said petitioner did not know and had no cause to know that the said J. H. Sedberry was insolvent or contemplated going into bankruptcy.

That after the adjudication in bankruptcy of the said J. H. Sedberry was had, Thomas G. Watkins was elected Trustee of his estate, was qualified and has ever since been acting as said Trustee.

That the said J. H. Sedberry did not schedule the said farm as an asset but claimed that same belonged to his wife, Mrs. Z. C. Sedberry, to hold for the uses in trust mentioned in a conveyance to her of same by W. J. Zellner and wife, of record in Book 23, page 202, R. O. W. C., Tennessee.

That thereafter, under the authority of Lee Brock, Esq., Referee, the Trustee, Thomas G. Watkins, filed a bill in the Chancery Court of Williamson County, against J. H. Sedberry, Z. C. Sedberry and others, seeking to have title to said farm and all usufruct therefrom declared to be in Watkins, Trustee, to set aside the Zellner conveyance as fraudulent, etc. In said cause, Receivers were appointed who took possession of the farm and growing crops.

IV

That the petitioner intervened in said cause and upon its petition therein, a consent order was entered turning over to it the turnip seed on hand, some 39,000 pounds, upon its executing a bond to the Receivers therein to repay to the Receivers the difference between the contract price of 13 1/2 cents and the market price at that time, same not to be less than forty cents, in case title to the farm should be adjudged to be in J. H. Sedberry. That the petition therein of your petitioner, as amended, asked for the delivery of and asserted title to the turnip seed crop and alleged that the contract was made with the party in whom title to the farm should be adjudged.

Within the last sixty days next preceding the filing of this petition, to-wit, on the —— day of August, 1919, the Chancellor at Franklin, rendered a decree setting

aside the Zellner conveyance, putting title both to the farm and the usufruct thereof in Thomas G. Watkins, Trustee, and rendering judgment against your petitioner on its bond in the sum of $10,378.20, together with interest from June 20, 1918, the date of the execution of its bond and the delivery of the seed to it. Said amount with interest came to $11,070.18, and was computed on the difference of 26 1/2 cents per pound between the contract price of 13 1/2 cents and the market price of 40 cents on 39,163 pounds of turnip seed.

V

That in said litigation the title to the seed and the amount in controversy by reason of the breach of the bankrupt's contract with petition caused by his bankruptcy were in dispute and said decree liquidated your petitioner's claim by litigation within the meaning of Sec. 57-n of the Federal Bankruptcy Act.

That your petitioner is advised that it now has the right to come into this Court and prove its claim for the said sum of $10,378.20, together with interest from June 20, 1918, which makes the total sum of $11,070.18 as of the date of the entry of the decree in the case of Watkins, Trustee, v. Sedberry.

That there are no set offs or counter claims to said claim and same is justly owing and due.

Your petitioner is advised, and, therefore, avers that under the provisions of Chapter 155 of the Acts of 1907 of the General Assembly of the State of Tennessee, it has a preferred and secured claim to said crop or to its proceeds and it asks that its claim be so approved; but, if it is mistaken in this, that it, in any event, has an unsecured claim for the amount above stated.

That under the provisions of Chapter 155 of the Acts of 1907, it was provided in brief, that farmers and others engaged in farming in the State might enter into contracts with warehousemen or others for the cultivation of a crop for a period of from one to three years, that such contract should be binding and irrevocable and that either party might specifically enforce same in equity, if he so desires.

That this claim is verified and filed by W. E. Norvell, Jr., attorney and agent for the D. M. Ferry & Company, because same is a non-resident corporation and prompt action is necessary in view of the probable early distribution of the estate and the limitation of time upon the proving of this claim; and many of said facts are peculiarly within the knowledge of said attorney.

VI

PREMISES CONSIDERED, petitioner prays:

1. That its claim be allowed for the said sum of $10,378.20 together with interest from June 20, 1918, making in all a total of $11,070.18 as of August 1, 1919.

2. That said claim be allowed as a preferred or secured claim and, if not, in any event, that it be allowed as an unsecured claim.

W. E. Norvell, Jr.,
Attorney and Agent for
D. M. Ferry Company.

State of Tennessee }
County of Davidson }

W. E. Norvell, Jr., first being duly sworn according to law, makes oath that as attorney for the D. M. Ferry Company, he is authorized to file this petition and that it is within his knowledge that the aforesaid debt was incurred as and for the consideration above stated.

W. E. Norvell, Jr.

Subscribed and sworn to before me,
this the 22nd day of September, 1919.
Geo. H. Armistead, Jr.,
Notary Public.
(SEAL)

STATEMENT OF EXPENSES PAID BY JORDAN STOKES, JR., FOR SELF AND ASSOCIATES, PURSUANT TO EMPLOYMENT AS COUNSEL, BY THOMAS G. WATKINS, TRUSTEE IN BANKRUPTCY.

To Miss Grace Dawson, Stenographer, General examination Bankrupt and family	$ 53.50
To J. F. Galloway, carbon copy, deposition in case of Watkins, Tr. v. Sedberry	8.70
To L. M. Harwood, Stenographic work	20.00
To Mrs. Addie Hughes King, stenographic work, certified copies	1.50
To Buford Duke, stenographic work	15.55
To Robert Vaughn, Clerk and Master, Certification sufficiency of surety on bonds, case of Watkins v. Sedberry	1.00
To 41 Long Distance telephone calls, Franklin and Thompson Station, Tenn.	10.15
To Jonas T. Amis, U. S. Marshal	16.88

Claim and Petition of D. M. Ferry Company

To A. J. Swain, stenographer, per diem and 15 trips to Franklin and Thompson Station, making copies of records, taking depositions, making transcript of record in the bankruptcy case, including the general examination of Sedberry and family, in the matter of J. H. Sedberry, for use in the trial of the case of Watkins v. Sedberry, and carbon copies of records, making a total amount of transcribed matter, over 1,200 pages, not counting a large amount of copy work, some of which was not introduced or used in evidence 500.00

To expenses of myself and associates, J. R. West and R. H. Crockett, Mr. West and myself going to Franklin, Tenn., and all three of us going to Thompson Station, and territory in and around Thompson Station; to hotel bills and other incidental expenses, we having made approximately 50 trips to Franklin and territory adjacent thereto in investigation of records, interviewing witnesses, and generally in preparing the case for trial; being present and arguing demurrers, and the actual trial of the case; all of such expenses being paid by me, and extending over a period of two years. In addition, there were quite a number of small items which I had to pay out in cash for various and sundry matters in the development and the preparation and trial of the case of Watkins, Trustee, vs. Sedberry. All of the expenses paid by me, under this head, would amount to more than 500.00

Total expenses $1127.28

The item of $500.00 charged for the services of Miss Aline J. Swain, I wish to make this statement in regard thereto.

Miss Swain is my regular stenographer and has been in my employ a matter of ten years, and is thoroughly competent to take depositions and generally, to do stenographic work and all matters of this character. In addition, she is exceptionally accurate in her work, and for this reason, I desired this copy work, and the making of copies of the records at Franklin, made by her. And also, on account of the fact that I was paying all of the

expenses, and if I had had a regular Court Reporter to have done the same work that was done by Miss Swain, and had had to take the trips to Franklin and do the same character of work that she has done, his charges would have been approximately $1,000; for these reasons, I had the work done by my stenographer; and on a number of occasions, used Court Reporters in my other work that she would have done, and postponed work and caused her to have to work over time in doing other work in my office.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT.

NOTICE OF FILING PETITION FOR REVIEW TO

NORMAN FARRELL, ATTORNEY FOR BANKRUPT AND MRS. Z. C. SEDBERRY, W. H. SEDBERRY, J. B. SEDBERRY, MRS. CATHERINE SEDBERRY OVERALL, FALLEY OVERALL:

Please take notice that on the 18th day of November, 1920, at 9 o'clock A. M., we, as Attorneys for Thomas G. Watkins, Trustee in Bankruptcy, Jordan Stokes, Jr., Joseph R. West and R. H. Crockett, will present to the above named Court, at the offices of the Clerk thereof, at the Federal Courthouse in Cincinnati, Ohio, and file with said Clerk, the Petition of said Thomas G. Watkins, Trustee in Bankruptcy of this estate, Jordan Stokes, Jr., Joseph R. West and R. H. Crockett, for review or revision, in the above named cause, of a certain final decree of the District Court of the United States for the Nashville Division of the Middle District of Tennessee, filed in the office of the Clerk, of said District Court, the 29th day of October, 1920, upon the Petitions to Review the Order of the Referee, and filed by the Trustee and others, and the Bankrupt and others.

A copy of said Petition is annexed hereto and made a part of this notice.

Jno. R. Aust,
Clarence T. Boyd,
Attorneys for
Thos. G. Watkins, Trustee,
Jordan Stokes, Jr.,
Joseph R. West,
R. H. Crockett.

I acknowledge service of the notice and receipt of copy of this petition for revision.
This Nov. 18, 1920.

Norman Farrell,
Atty. for Sedberrys.

PETITION FOR REVIEW OR REVISION—Filed Nov. 18, 1920.

TO THE HONORABLE JUDGES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT:

Your petitioners, Thomas G. Watkins, Trustee of the above named estate, Jordan Stokes, Jr., Jospeh R. West and R. H. Crockett, by their Attorneys, Clarence T. Boyd and John R. Aust, respectfully represent and show:

That the above named bankrupt, J. H. Sedberry, filed a Voluntary Petition in Bankruptcy in the United States District Court for the Nashville Division of the Middle District of Tennessee, on August 24, 1917, and was duly adjudged a bankrupt upon said Voluntary Petition. Said J. H. Sedberry, bankrupt, scheduled debts and liabilities aggregating $18,260.53. Thereafter, other claims were filed, aggregating about $11,535.85, including a claim of D. M. Ferry Company, for something over $11,000.00.

Thereafter, on the —— day of ———— at the first meeting of the creditors of the bankrupt, duly called for that purpose, your petitioner, Thomas G. Watkins, was elected and appointed Trustee of the said bankrupt's estate, and thereupon qualified and has been acting as such Trustee, since that date.

That the schedules filed by the bankrupt with his voluntary petition, which schedules were duly sworn to, showed no assets, except some pieces of real estate, encumbered for more than their value, and some household goods which were claimed exempt: In effect, scheduling no assets.

That your petitioner Thomas G. Watkins, as Trustee, sought out and employed petitioner Jordan Stokes, Jr., to make a preliminary investigation, to see whether the bankrupt had failed to schedule any assets, or was concealing any assets, and if such preliminary investigation justified, then it was contemplated that a contract upon a contingent basis would be entered into between the Trustee in bankruptcy, and the said Jordan Stokes, Jr., to remunerate petitioner Stokes for his services, in case he was successful in securing any assets for this estate.

As a result of the investigation made by petitioner Stokes, the Trustee in Bankruptcy and petitioner Stokes felt that the bankrupt and the members of his family should be examined before the Referee. There being no assets in the hands of the Trustee, and no assets scheduled by the bankrupt upon which the Trustee could realize any funds whatsoever, at the request of the Trustee, petitioner Stokes agreed to advance the moneys necessary to compel the attendance of the bankrupt and the members of his family, and to advance the stenographic costs incident to their examination before the Referee. Petitioner Stokes did advance said funds, with the understanding that if said examination, coupled with the investigation which had already been made, should warrant the filing of proceedings looking to the recovery of assets for this estate, that a contract would be entered into between petitioner Stokes and the Trustee, upon a contingent basis. And, thereupon, the bankrupt and certain members of his family were summoned before the Referee and examined by petitioner Stokes; petitioner Stokes having in the meantime associated with himself in making this investigation and conducting this examination, petitioner Joseph R. West, another Attorney of the Nashville Bar.

As a result of the examination of the bankrupt and members of his family, and the investigation as hereinbefore referred to, the Trustee in bankruptcy, and petitioners Stokes and West, were of the opinion that the bankrupt, with the aid and assistance of his family, was fraudulently and wilfully concealing a large amount of assets that rightfully belonged to this estate.

Thereupon, the Trustee of this estate filed a petition before the Referee, before whom the general examination of the bankrupt and the members of his family was conducted, setting forth briefly the facts, and the necessity of employing counsel; and that the only way counsel could be secured, was upon a contingent basis. This petition was duly filed in the Referee's court, and upon this petition being filed, the Referee made an order authorizing and empowering and instructing the Trustee to contract with petitioner Stokes, upon a contingent basis, looking to the recovery of assets rightfully belonging to this estate, and wilfully and fraudulently concealed by the bankrupt.

A proper minute entry was made upon the Minute Book of the Referee, showing the filing of this petition and his order thereon, it being in the regular Minute Book, and appearing under the style of this case, and in regular order, with the other orders in reference to this estate.

Thereupon, the Trustee entered into a contract with petitioner Stokes, upon a contingent basis, petitioner Stokes agreeing to advance the funds necessary to conduct the proceedings to recover the property fraudulently concealed by the bankrupt, and to save the Trustee harmless on account of the employment of the said Stokes. Under the terms of said contract, petitioner Stokes was to be refunded such sums and expenses as might be paid by him in prosecuting the proceedings necessary to secure the fraudulently concealed assets of this estate, and after such expenses were deducted, was to receive one-half of any and all funds or property secured for this estate. The contract was reduced to writing and signed by the Trustee and petitioner Stokes and then submitted to the Referee in Bankruptcy and approved by him.

Thereafter, petitioner Stokes, with petitioner West associated with him as co-counsel, made further investigations, and on October 24, 1917, filed a bill in the Chancery Court at Franklin, Tennessee, seeking to have certain property declared to be the property of the bankrupt and his Trustee, and that such property rightfully

belonged to the bankrupt and had belonged to him for a long number of years, and was wilfully concealed by him.

In this Bill, it was alleged and charged that the bankrupt had procured a deed to be made to his wife as Trustee, on January 1, 1902, but that in fact, the property was the property of the bankrupt, who was the sole owner and had all rights thereto, and that the property conveyed thereunder, was the property of the bankrupt, J. H. Sedberry, and was a part of the assets of the bankrupt that should have been scheduled and passed to his Trustee in Bankruptcy, as subsequently adjudicated by the Chancellor at Franklin, Tennessee.

The property mentioned in said Bill consisted of a large and valuable farm in Williamson County, Tennessee. Under this Bill, the farm was placed in possession of the Receivers by appointment of the Chancery Court at Franklin, Tennessee, and the crops raised thereon passed into the possession of said Receivers.

After nearly two years, this case was brought to trial at Franklin, Tennessee, and upon the hearing before the Chancellor, a decree was rendered, in all things sustaining the Bill, and adjudging that the bankrupt was, and had been the owner of said farm and personal property; the paragraph of the final decree of the Chancery Court at Franklin, upon this question, being as follows:

> "That the conveyance heretofore made by W. J. Zellner and wife, to Z. C. Sedberry, Trustee, on January 1, 1902, of record in Book 23, page 202, of the Register's Office of Williamson County, Tenn., conveying said land, is void as against the complainant in this cause, **and that the real title to said land aforesaid, property located thereon and income and proceeds thereof, was and has been in defendant J. H. Sedberry, from the time of the taking of said deed, namely, January 1, 1902; and that upon the bankruptcy of defendant J. H. Sedberry, and appointment and qualification of his Trustee, the complainant in this cause, the title to such property passed to and vested in the complainant, Thomas G. Watkins, Trustee in Bankruptcy of J. H. Sedberry, by operation of law.**"
>
> Final Decree of the Chancery Court at Franklin, Tennessee.

That the bankrupt, J. H. Sedberry, was guilty of fraud in fact, and that the title to the farm and the proceeds therefrom and the personal property thereon, had al-

ways been the property of the bankrupt, and the title thereto passed to his Trustee in Bankruptcy as of the date of adjudication. The total value of all this property so secured and recovered, was $99,000.00.

During the progress of the suit in the Chancery Court at Franklin, Tennessee, Mr. R. H. Crockett was associated with petitioners Stokes and West, as associate counsel with them.

Thereafter, the bankrupt, J. H. Sedberry, and members of his family, filed a petition before the Referee in Bankruptcy asking among other things, that the fees of the attorneys for the Trustee, be fixed; and the Trustee in Bankruptcy, and said Stokes, West and Crockett, filed answer thereto, setting up their contract for a fee upon the basis fixed, and asked, if necessary, that their answer be taken as a petition, and that the fees contracted and agreed upon, would be paid to said Stokes; that is, one-half of the property secured for the bankrupt's estate, after payment of the costs and expenses of the proceedings, as provided in said contract.

The Referee held that this contract was null and void, and not binding on him, and fixed the fee at $10,000.

The Trustee in Bankruptcy and said Stokes, West and Crockett, filed a petition to review this order, and subsequently, the bankrupt, J. H. Sedberry, and his family filed petitions to review the action of the Referee.

Upon the hearing of these petitions, the District Court held that the contract was improvidently made, and was unauthorized and null and void, and decree was entered accordingly. A fee of $7,500.00, as upon a quantum meruit, was allowed by the District Court, and expenses of $750.00.

From this final order of the District Court, petitioners, Watkins, Trustee, and Stokes, West and Crockett excepted and prayed an appeal to this Court within ten days from the entry of the order, and the record will be made up under said appeal.

A large volume of proof was taken before the Referee, consisting of the testimony of the leading lawyers of the Nashville Bar, which was to the effect that the contract providing for one-half the recovery, was reasonable, usual, and customary; and in addition, that upon a quantum meruit, the said Stokes, for himself and associates, was entitled to fifty per cent of the amount recovered; namely, fifty per cent of $99,000.00.

The District Judge filed a written memorandum opinion in this cause, setting out his findings and conclusions.

ASSIGNMENTS OF ERROR.

Your petitioners would now show the Court that said decree of said District Court was and is erroneous in that:

I

The Court erred in holding that the contract of employment made by Thomas G. Watkins, Trustee in bankruptcy, with petitioner Jordan Stokes, Jr., and which contract was subsequently approved by the Referee in Bankruptcy, was improvidently made, or unauthorized, and therefore invalid.

II

The Court erred in holding that the order entered by the Referee in Bankruptcy in this cause, approving the contract made by Thomas G. Watkins, Trustee in Bankruptcy, with Jordan Stokes, Jr., was not an order of the Referee within the provisions of the Bankruptcy Act and the law in reference to petitions to review.

III

The Court erred in holding that the D. M. Ferry & Co. claim should not be included in the debts or claims properly provable in bankruptcy, upon which to determine the allowance of Counsel fees for services rendered the Trustee in bankruptcy in this cause.

IV

The Court erred in holding that the allowance of Counsel fees to the Trustee in Bankruptcy in this cause, should be based upon the amount of claims provable and filed in this cause, and not upon the total amount of the recovery, or assets coming into the hands of the Trustee in Bankruptcy.

V

The Court erred in holding that petitioners Jordan Stokes, Jr., Joseph R. West, and R. H. Crockett, were only entitled to a fee of Seven Thousand Five Hundred ($7,500) Dollars for services rendered Thomas G. Watkins, Trustee in Bankruptcy herein, on a quantum meruit basis.

VI

The Court erred in holding that petitioners Jordan Stokes, Jr., Joseph R. West, and R. H. Crockett, were

only entitled to expenses incurred by them, in the sum of Seven Hundred and Fifty ($750) Dollars.

VII

The Court erred in holding that notice to J. H. Sedberry and his family of the making of the contract between the Trustee in Bankruptcy and said Stokes, was necessary, and that for the absence of such notice, neither the bankrupt nor the members of his family were bound to any extent by said contract.

VIII

The Court erred in failing to find and hold that said contract between said Trustee in Bankruptcy and said Jordan Stokes, Jr., which contract was approved by the Referee, was valid and binding, and that said Stokes was entitled to be paid the expenses advanced by him in full, and the fee therein contracted, to-wit: one-half of $99,000, after deducting the costs and expenses advanced by him, as provided in said contract.

In support of this petition, we attach hereto and make a part hereof, certified copies of certain papers and records, as follows:

Within ten days from the entry of the Order of the District Court herein complained of, petitioners filed necessary papers to perfect an appeal to this Court; and the record upon such appeal, will contain certified copies of the following papers:

1. Voluntary Petition in Bankruptcy, filed by bankrupt, J. H. Sedberry.
2. Order of Reference referring matter to Referee.
3. Order of adjudication, adjudicating the above named bankrupt a bankrupt.
4. Order appointing Trustee.
5. Petition by the Trustee to employ Counsel.
6. Order of the Referee thereon.
7. Minute entry in Minute Book of the Referee, showing the filing of petition and order thereon.
8. Contract between Trustee in Bankruptcy and petitioner Jordan Stokes, Jr., providing for compensation of petitioner Stokes.
9. Original Bill filed in the Chancery Court at Franklin, Tennessee, by petitioners Stokes and West, as Attorneys for the Trustee.
10. Answers of defendants to the Bill filed by the Trustee in the Chancery Court at Franklin, Tenn.

Assignments of Error

11. Abridgement of the testimony read in evidence in the Chancery Court trial at Franklin, Tennessee.

12. Final Decree of the Chancellor upon the Bill filed by the Trustee.

13. Petitions of Sedberrys to fix Counsel fees, filed before the Referee.

14. Answer and Cross Petition of Trustee and petitioners Stokes, West and Crockett.

15. Answer of the bankrupt and members of his family, to such Cross-Petition.

16. An abridgement of the testimony taken upon the issues made up by the respective petitions and answers filed before the Referee, to fix Counsel fees.

17. The Findings of Fact of the Referee.

18. Order of the Referee upon such petitions and answers.

19. Petition to review Order of the Referee filed by Trustee and petitioners Stokes, West and Crockett.

20. Petition for Review, filed by the bankrupt and members of his family.

21. Order of the District Court upon Petitions to Review.

22. Memorandum Opinion embodying the Findings and conclusions of the District Court.

23. Rules 43, 44, and sub-section 1 of Rule 45, of the District Court for the Nashville Division for the Middle District of Tennessee.

24. Proof of claim D. M. Ferry Co.

25. Expense account Jordan Stokes, Jr., and others.

Certified copies of these various papers are not attached to this Petition to Revise, for the reason that they will be incorporated in the transcript upon the appeal prayed by the Trustee and petitioners Stokes, West and Crockett, and reference cannot be made to the pages of the record on the appeal, because said record has not yet been made up, due to the fact that the District Court has not yet signed the order allowing the appeal. However, due exceptions were taken, petition praying for an appeal filed, embodying assignments of error, bond filed, and citation made, all within ten days. And petitioners cannot present their praecipe until after the District Court signs the order granting the appeal; and reference is made in this Petition to all of the foregoing exhibits, which will be embodied in the record when it is made up upon the appeal of these petitions.

In case the District Judge shall file a further Findings of Fact, which he has been requested to do, such Findings of Fact will be embodied in the record upon the

appeal of petitioners, and will likewise be referred to in support of this petition.

This course is adopted by petitioners, under Rule 34, sub-section 1, of this Court.

WHEREFORE, your petitioners feeling aggrieved because of said decree, pray that the same may be reviewed, revised, and reversed by this Honorable Court, as provided in Section 24 of the Bankruptcy Act, under the rules and practice in such cases provided, and for such other and further relief as may be just and proper.

Dated at Nashville, Tennessee, this 17th day of November, 1920.

Thos. G. Watkins,
Trustee in Bankruptcy of
J. H. Sedberry,
Jordan Stokes, Jr.,
Jos. R. West,
R. H. Crockett,
By C. T. Boyd.

Jno. R. Aust,
Clarence T. Boyd,
Attorneys for Petitioners.

State of Tennessee }
County of Davidson }

Joseph R. West makes oath and says, that he is one of the petitioners herein; that the statements contained in said petition for review, as set forth therein, are true, as he verily believes.

Joseph R. West.

Subscribed and sworn to before me,
this 17th day of November, 1920.
Aline J. Swain,
Notary Public.

My commission expires July 1924.
(SEAL)

PETITION OF SEDBERRYS TO REVISE THE FINAL DECREE OF THE U. S. DISTRICT COURT—Filed November 18, 1920.

To the Honorable Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

The petition of J. H. Sedberry, bankrupt, his wife, Z. C. Sedberry, both individually and as trustee, his sons, J. B. Sedberry and W. H. Sedberry and his daughter, Mrs. Catherine Sedberry Overall, and her husband Falley Overall, respectfully show unto the Court:

That on August 24, 1917, petitioner, J. H. Sedberry, was on his voluntary petition, adjudicated a bankrupt. That his schedules disclosed substantially no assets and debts of some $17,000 or $18,000 subsequently reduced in amount by agreement of the parties.

That Thos. G. Watkins was elected Trustee in bankruptcy and he on August 24, 1917, without notice to creditors, or to the bankrupt and your other petitioners, employed Mr. Jordan Stokes, Jr., as his counsel, under a written contract, to institute such suit or suits as might be necessary to recover whatever property of the bankrupt said counsel might discover.

The employment was upon a contingent basis, the counsel contracting to bear all the costs and expenses of the suit and save the Trustee harmless from any and all liability that might be incurred by reason of its prosecution. The contract further provided that any property recovered for the estate should be first chargeable with the costs and expenses incurred by counsel and the remainder thereupon equally divided between said counsel and the Trustee. This contract was submitted to the Referee and approved by him but, as the Referee and the district judge both found, without any knowledge thereof on the part of these petitioners until after the attorney's services had been fully performed and concluded.

The opinion of Judge Sanford, made his S. F. by order of Court, is attached hereto as Exhibit "A" and made a part hereof.

The other material facts found by the district judge, material to the consideration of the questions of law presented by this petition to review are thus set forth in said opinion:

> "Counsel thereupon instituted suit in the Chancery Court at Franklin, Tenn., to set aside as fraudulent a conveyance of a tract of land made in 1902 to the bankrupt's wife in trust for the bankrupt, his wife and their children, and to recover said land and

all the personal property and crops thereon as the property of the bankrupt. Upon final hearing the Chancery Court adjudged and decreed that this land, with the personal property located thereon, and the income and profits therefrom, was and had been the property of the bankrupt, and that his wife and children had no right or title thereto; that said conveyance was made with the intent of defrauding his existing and subsequent creditors and was void as to them and as against the trustee in bankruptcy; that the trustee in bankruptcy had title to said land and personal property which had vested in him by operation of law, and was entitled to have the land sold and the proceeds turned over to him for administration in the bankruptcy court; and that all right, title and interest in and to said land be divested out of the bankrupt and his wife and children and vested in the trustee in bankruptcy. Costs were also awarded the trustee in bankruptcy against the bankrupt and his wife; but no recovery was awarded for counsel fees.

"The defendants, having no notice of the contract between the trustee and his counsel, and understanding that this decree would be satisfied upon the payment of the claim of creditors and the costs and expenses of the bankruptcy cause, including reasonable compensation to the counsel for the trustee, did not appeal from this decree. However, no definite contract was made with the trustee or his counsel to this effect; and while much proof was taken in reference to the matter of such an agreement, it is not now relied upon by any of the parties or at all material except in so far as the understanding of the defendants in reference to this matter may throw light upon their failure to appeal and the termination of the litigation in the Chancery Court.

"Before any further proceedings had been taken pursuant to this decree the bankrupt with his wife and children filed a petition in the bankruptcy court praying that the court fix the amount of the provable debts of the bankrupt, the expenses and costs of the bankruptcy proceedings, and the reasonable attorneys' fees for the trustee's counsel, and that the trustee be then directed to join with petitioners in executing a mortgage on this land to raise the necessary fund to pay off such debts, costs, expenses and fees, and the bankruptcy cause then dismissed. The trustee's counsel and counsel whom he had associated

with himself pursuant to the terms of the contract with the trustee, answered this petition, setting up the contract with the trustee and praying that he be paid all his expenses incurred and as a fee one-half of the value of the property recovered under the chancery court decree. To this the bankrupt and family answered, insisting that this contract was champertous and otherwise void, and that as the trustee's counsel relied on this contract, and not on a *quantum meruit*, he was not entitled to be paid any amount whatever and the claim should be dismissed.

"The referee, while of the opinion that the contract for fees was not champertous, held it otherwise unauthorized and void, but awarded the trustee's counsel fees for himself and associates, on a *quantum meruit* basis, of $10,000.00; with expenses of $750.00. Both the trustee's counsel and associates, and the bankrupt and his family, have filed petitions to review the referee's order.

"The land recovered by the trustee in bankruptcy is of the agreed value of $70,000, and the personal property of the value of $29,743.01; making a total recovery of $99,743.01.

"The total debts scheduled aggregated $18,260.53, which were, by consent, somewhat reduced. The total claims filed and allowed within the statutory period of one year aggregated with interest, $17,336.32.

"It was originally assumed by all parties that the fees of the trustee's counsel would have to be paid out of the general fund herein, thereby diminishing the surplus to be returned after the full administration of the bankrupt's estate for creditors; to the bankrupt or his family; and that hence the bankrupt and his family were alone adversely interested in the amount of counsel fees; the trustee, as the representative of creditors, having in fact taken the position in his pleadings that the entire fifty per cent fee should be paid to counsel in accordance with his contract.

"However, in consequence, it seems, of a doubt expressed by me that the hearing as to the correctness of this position, the attorneys for the bankrupt and his family have been allowed to file a supplemental brief in which the position is taken that the total recovery against them is in substance limited to the amount of the creditors' claims, which cannot be enlarged by the allowance of counsel fees as

against them, and that in consequence, whatever fees are allowed should be paid out of the amounts coming to creditors upon their claims.

"And while it is true that counsel for the trustee and their associates have not in their pleadings sought an allowance of fees upon a quantum meruit basis, I am of opinion that this may be properly allowed under the prayer of the original petition of the bankrupt and his family asking the court to fix and determine such fees; and that, even independently of this matter, it is the duty of the court, upon its own motion, to fix the reasonable fees of counsel for the trustee as part of the costs of administration herein.

"Excluding, therefore the Ferry & Co., claim, there remains approximately $21,000.00 of claims of creditors, which will be paid in full, with interest, as a result of this litigation. To this extent the creditors represented by the trustee in filing the bill have been directly and greatly benefited as a result of the chancery litigation, which has secured the payment of their claims in full, with interest, that otherwise would have remained wholly unpaid.

"Unquestionably the litigation in the Chancery Court was ably and diligently efficiently conducted. It involved the setting aside of a fraudulent conveyance many years before. While the questions of law involved do not seem to have been very complicated, there was undoubtedly a vigorous contest, both as to the facts and the application of the law to these facts. The evidence in behalf of the trustee consisted in large part of facts ascertained on the preliminary examination in the bankruptcy proceedings of the bankrupt and members of his family; supplemented largely by other evidence in the possession of one of the creditors, who had previously instituted a suit in the Chancery Court to set aside this same conveyance as fraudulent—which appears inferentially to have been the case which precipitated the filing of the petition in bankruptcy—this creditor having been one of the principal witnesses for the trustee in the Chancery suit. In addition to this, there was a considerable amount of documentary evidence, from the public records, and some other testimony. Undoubtedly, however, the preparation of the case involved a large amount of work and careful and painstaking investigation of the records and of the facts connected with the transactions in question, which had

extended over a large number of years; and the outside investigation of many matters which did not result in the obtaining of direct testimony. The actual hearing in Chancery Court occupied only two days; and there was, as stated, no appeal from the decree.

"In the present case, however, in the event the suit in the Chancery Court had been unsuccessful, counsel for the trustee would have obtained no fees whatever, and would not in addition have been reimbursed for any of the expenses which they incurred in the prosecution of the litigation, which amounted to a considerable sum.

"After careful consideration, under all the circumstances of the case and in view of the diligence and skill with which this litigation was conducted and its highly beneficial result to creditors, I am of opinion that the sum of $7,500.00 would be reasonable compensation to the counsel for the trustee for the services rendered by himself and his associate counsel. The order of the referee will accordingly be modified so as to fix his compensation at this sum.

"Counsel for the trustee also claimed an allowance of $1,127.28 for expenses. The referee held that these expenses were not properly itemized and that he could not ascertain just what amount was chargeable as part of the costs and expenses, but stated that if they were to be passed upon in a lump sum, an order might be entered allowing such expenses in the sum of $750.00, or that if desired by counsel proper itemizing of the expenses might be made and they would then be passed upon by him. Counsel for the trustee did not submit any other itemization of their expenses and the bankrupt and his family did not request further itemization; and the referee thereupon allowed the expenses in the lump sum of $750.00.

"The expenses in question were merely proven in the form of a general statement of expenses filed as an exhibit to the deposition of counsel. Outside of certain minor items they were not reported in detail, as required by the Bankruptcy Act. Two of the chief items consisted merely of general statements as to $500.00 paid to a stenographer for services described in very general terms, and $500.00 for travelling expenses, etc., of counsel and his associates likewise stated in very general terms, without itemization.

"A decree will accordingly be entered modifying the referee's order so as to allow counsel fees in the

sum of $7500.00 only, and otherwise confirming the same."

On the foregoing finding of facts the Court reached certain conclusions of law, as set forth in its opinion attached, as shown above, and thereupon adjudged and decreed on October 29, 1920, as follows:

"ORDER.

"IN THE UNITED STATES DISTRICT COURT
AT NASHVILLE.

IN THE MATTER OF J. H. SEDBERRY, BANKRUPT.	No. 5206 in BANKRUPTCY

"This cause came on to be heard on the petition of J. H. Sedberry et al and Jordan Stokes, Jr., et al to review an order of the Referee of March 13, 1920, in the matter of allowance of compensation to counsel for the trustee in bankruptcy and the expenses of such counsel, and the same having been argued by counsel, and the court upon consideration thereof, having handed down its written opinion thereon, it is in accordance therewith ordered, adjudged and decreed that the said order of the Referee in bankruptcy be and is modified so as to allow counsel for the trustee in bankruptcy a fee of $7500, in lieu and instead of $10,000 as allowed by the Referee and that otherwise the said order be and is confirmed. Approved for entry. Oct. 29th, 1920.

Sanford, Judge."

To certain of said rulings of law and the judgment of the court thereon petitioners excepted at the time and still do except and they now pray this Honorable Court to review said rulings, order and judgment of the Honorable District Court herein complained of in the following respects.

Your petitioners show that they are aggrieved by the orders and judgments of said District Court and injured thereby and that the errors they complain of and now assign consist:

1. That the Court erred in allowing any recovery to Mr. Stokes and associates by reason of the champertous nature of their written contract with the trustee in bankruptcy, whereunder said attorneys services were performed.

Petition of Sedberrys to Revise the Final Decree

2. That the Court erred in holding that the attorney's fee awarded Mr. Stokes and associates should be taxed against petitioners or be paid out of the "surplus" left after paying creditors.
3. That the Court erred, as a matter of law, in awarding an attorney's fee of so much as $7500, on the facts found, if the case was one wherein an award could be made against petitioners.
4. On the facts found in allowing any expenses to said attorneys.

Petitioners attach to this, their said petition to review and revise, and as exhibits thereto and as part thereof, the following:

Exhibit "A" Petition of the Sedberrys filed before Referee December, 1919.
Exhibit "B" Answer and cross-petition of Messrs. Stokes & Associates thereto filed.
Exhibit "C" Answer of Sedberrys to said cross-petition filed.
Exhibit "D" Findings of Fact of Referee filed.
Exhibit "E" Findings of Fact and Opinion of District Court filed.
Exhibit "F" Judgment of District Court entered.
Exhibit "G" Order allowing extension of time to Sedberrys to file petition to revise entered.
Exhibit "H" Sedberrys petition to review order of Referee filed.
Exhibit "I" Stokes et al petition to review order of Referee.

Petitioners pray further for an order of this Honorable Court directing the District Court to suspend the execution of its judgment of October 29, 1920, and all further proceedings against your petitioners in this matter, until the further orders of this Court, and they pray for all other, necessary, proper and general relief.

Norman Farrell,
Attorney for Petitioners.

State of Tennessee, }
County of Davidson. }

I, Norman Farrell, on oath state that I am attorney for said petitioners; am personally acquainted with the facts stated in said petition; and same are true to the

best of my knowledge and belief; that petitioners are now non-residents of Tennessee, residing in Arkansas and that I make oath to said petition for the reasons stated.

Norman Farrell.

Subscribed and sworn to before me at Nashville, Tenn., this —— day of November, 1920.

E. L. Doak,
Clerk U. S. District Court, Middle District of Tenn.

EXCEPTIONS TO FINAL DECREE, FILED BY THOS. G. WATKINS, TRUSTEE, JORDAN STOKES, JR., JOS. R. WEST, R. H. CROCKETT—Filed Nov. 8, 1920.

Now comes the petitioners, Jordan Stokes, Jr., Joseph R. West and R. H. Crockett, and Thomas G. Watkins, Trustee, and except to the order or final decree entered herein on October 29th, 1920, in modifying the order of the Referee so as to allow petitioners and said Trustee in bankruptcy, Counsel fees only in the sum of Seven Thousand Five Hundred ($7,500.00) Dollars, and in affirming the order of the Referee in allowing them only Seven Hundred and Fifty ($750.00) Dollars as expenses.

This November 8th, 1920.

John R. Aust,
Clarence T. Boyd,
Solicitors for
Jordan Stokes, Jr.,
Joseph R. West,
R. H. Crockett,
Thomas G. Watkins,
Trustee.

PETITION OF THOS. G. WATKINS, TRUSTEE, JORDAN STOKES, JR., JOS. R. WEST, AND R. H. CROCKETT, FOR APPEAL AND ASSIGNMENTS OF ERRORS—Filed Nov. 8, 1920.

To the Honorable Edward T. Sanford, District Judge:

Your petitioners, Jordan Stokes, Jr., Joseph R. West, R. H. Crockett, and Thomas G. Watkins, Trustee, in the above entitled cause, feel aggrieved by the decree entered in the above entitled cause on October 29th, 1920, and do hereby appeal from said decree, to the Circuit Court of Appeals for the Sixth Circuit, sitting at Cincinnati, Ohio, for the reasons set forth in an assignment of errors filed herewith, and they pray that their appeal be allowed and a citation be issued, as provided by law, and that a transcript of the record proceedings, and documents about which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Sixth Circuit, sitting at Cincinnati, Ohio, under the rules of said Court in such cases made and provided.

And your petitioners further pray that the proper order relating to the security to be required of them, be made.

John R. Aust,
Clarence T. Boyd,
Solicitors for
Jordan Stokes, Jr.,
Joseph R. West,
R. H. Crockett,
Thomas G. Watkins, Trustee.

ORDER ALLOWING APPEAL ON PETITION OF JORDAN STOKES, JR., AND OTHERS—Filed November 8, 1920.

The petitioners are allowed an appeal as above prayed, upon the giving of an appeal bond in the sum of Five Hundred Dollars ($500.00), with good and sufficient security to be approved by me, conditioned that the said petitioners shall prosecute their appeal to effect, and answer all costs if they fail to make their appeal good.

This Nov. 17th, 1920.

Sanford, District Judge.

ASSIGNMENT OF ERRORS—Filed Nov. 8, 1920.

Now comes petitioners Jordan Stokes, Jr., Joseph R. West, R. H. Crockett and Thomas G. Watkins, Trustee, in the above entitled cause, and in connection with their petition for appeal, set forth the following Assignments of Error, upon which they will rely in the prosecution of said appeal from the decree made by this Honorable Court on the 29th day of October, 1920.

I.

The Court erred in holding that the contract of employment made by Thomas G. Watkins, Trustee in bankruptcy, with petitioner Jordan Stokes, Jr., and which contract was subsequently approved by the Referee in Bankruptcy, was improvidently made, or unauthorized, and therefore invalid.

II.

The Court erred in holding that the order entered by the Referee in Bankruptcy in this cause, approving the

contract made by Thomas G. Watkins, Trustee in Bankruptcy, with Jordan Stokes, Jr., was not an order of the Referee within the provisions of the Bankruptcy Act and the law in reference to petitions to review.

III.

The Court erred in holding that the D. M. Ferry & Co. claim should not be included in the debts or claims properly provable in bankruptcy, upon which to determine the allowance of Counsel fees for services rendered the Trustee in bankruptcy in this cause.

IV.

The Court erred in holding that the allowance of Counsel fees to the Trustee in Bankruptcy in this cause, should be based upon the amount of claims provable and filed in this cause, and not upon the total amount of the recovery, or assets coming into the hands of the Trustee in bankruptcy.

V.

The Court erred in holding that petitioners Jordan Stokes, Jr., Joseph R. West, and R. H. Crockett, were only entitled to a fee of Seven Thousand Five Hundred ($7,500) Dollars for services rendered Thomas G. Watkins, Trustee in Bankruptcy herein, on a quantum meruit basis.

VI.

The Court erred in holding that petitioners Jordan Stokes, Jr., Joseph R. West, and R. H. Crockett, were only entitled to expenses incurred by them, in the sum of Seven Hundred and Fifty ($750) Dollars.

John R. Aust,
Clarence T. Boyd,
Solicitors for
Jordan Stokes, Jr.,
Joseph R. West,
R. H. Crockett,
Thomas G. Watkins, Trustee.

APPEAL BOND AND APPROVAL OF SAME—Filed Nov. 23, 1920.

KNOW ALL MEN BY THESE PRESENTS, That we, Thos. G. Watkins, Trustee of J. H. Sedberry, Bankrupt, Jordan Stokes, Jr., Jos. R. West and R. H. Crockett, as principal, and Jordan Stokes, as surety, are held and firmly bound unto J H. Sedberry, et al., in the full and just sum of Five Hundred ($500) Dollars to be paid to the said J. H. Sedberry, et al., his certain attorneys, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 18th day of November in the year of our Lord one thousand nine hundred and twenty.

Whereas, lately at a District Court of the United States for the Nashville Division of the Middle District of Tennessee, in a suit pending in said Court, on Petition to Review an order of Lee Brock, Referee, allowing attorney's fees and expenses in the matter of J. H. Sedberry, Bankrupt, a final order or judgment was rendered against the property or estate of J. H. Sedberry, Bankrupt, allowing $7,500.00 attorney's fees and $750.00 expenses to Jordan Stokes, Jr., and others, and the said Thos. G. Watkins, Trustee, et al., having prayed and perfected an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the final order or judgment in the aforesaid suit, and a citation directed to the said J. H. Sedberry, et al., citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Sixth Circuit, to be holden at the City of Cincinnati, in said circuit, on the ——day of —— next.

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the said Thos. G. Watkins, et al., shall prosecute said appeal to effect, and answer all costs if they fail to make said appeal good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

Thomas G. Watkins,
Trustee, J. H. Sedberry, Bankrupt.
Jordan Stokes, Jr.,
Jos. R. West,
R. H. Crockett,
By C. T. Boyd, Attorney.
Jordan Stokes, Surety.

Approved by
Edward T. Sanford,
U. S. District Judge.

CITATION—Filed Nov. 23, 1920.

The United States of America, Sixth Judicial Circuit
to
J. H. Sedberry, Z. C. Sedberry, J. B. Sedberry, W. H. Sedberry, Catherine Sedberry Overall and Falley Overall

GREETING:

You are hereby cited and admonished to be and appear at the session of the United States Circuit Court of Appeals for the Sixth Circuit to be holden in the City of Cincinnati, Ohio, in said Circuit, on the 22nd day of December next, pursuant to an order allowing an appeal, filed and entered in the Clerk's office of the District Court of the United States for the Middle District of Tennessee, from a final decree, signed, filed and entered on the 29th day of October, 1920, in a certain matter, being Bankruptcy No. 5206, wherein you are petitioners, and Jordan Stokes, Jr., Joseph R. West, R. H. Crockett, and Thomas G. Watkins, Trustee, are petitioners-appellants, to show cause, if any there be, why the decree rendered in said matter, as in said order, allowing said appeal mentioned, should not be corrected and why justice should not be done the parties in that behalf.

WITNESS the Honorable Edward T. Sanford, District Judge for the Middle District of Tennessee, this 22nd day of November, 1920, of the Independence of the United States of America, the One Hundred and Forty-fourth year.

Edward T. Sanford,
U. S. District Judge for the
Middle District of
Tennessee.

We hereby waive service of this citation and enter our appearance for J. H. Sedberry, Z. C. Sedberry, J. B. Sedberry, W. H. Sedberry, Catherine Sedberry Overall and Falley Overall, in accordance herewith.

Attorney for
J. H. Sedberry,
Z. C. Sedberry,
J. B. Sedberry,
W. H. Sedberry,
Catherine Sedberry Overall,
Falley Overall.

ORDER EXTENDING TIME TO FILE TRANSCRIPT
—Entered December 20, 1920.

Thomas G. Watkins, Trustee, Jordan Stokes, Jr., Joseph R. West and R. H. Crockett, are allowed additional time of thirty days from the 22nd day of December, 1920, in which to complete and file the transcript on appeal, in the above cause.

Approved for filing—
Sanford,
Judge.

ORDER EXTENDING TIME TO FILE TRANSCRIPT
—Entered January 21, 1921.

In this case came the parties on both sides by their attorneys of record and moved the Court for thirty days additional time wherein to prepare the record on appeal for printing and to otherwise perfect and complete their appeal, which motion the Court is pleased to grant and it is so ordered.

ENTER:
Edward T. Sanford,
District Judge.

PRAECIPE — THOS. G. WATKINS, ET AL.,—Filed Dec. 21, 1920.

To the Clerk:

In the above entitled cause, appeal having been prayed and allowed, to the United States Circuit Court of Appeals for the Sixth Circuit, sitting at Cincinnati, Ohio, you are requested to embrace in the transcript of the record on appeal, the following:

1. Voluntary Petition in Bankruptcy of J. H. Sedberry.
2. Schedules of Assets and Liabilities.
3. Order of Reference, referring the matter to the Referee.
4. Rules Nos. 43, 44, and sub.sec. 1, of Rule No. 45, of the United States District Court, Nashville Division, Middle District of Tennessee.
5. Adjudication of Bankruptcy.
6. Order appointing Trustee.
7. Bond and qualification of Trustee.
8. Petition of Trustee to employ Counsel.
9. Order of Referee thereon.
10. Minute Entry in Minute Book of Referee, showing the filing of the Petition and Order thereon, approving Contract.
11. Contract of employment of Attorney.
12. Original Bill and exhibits, in the Chancery Court case of—Thomas G. Watkins, Trustee, v. J. H. Sedberry, et al.,—at Franklin, Tenn.
13. Answers of all defendants.
14. Abridgment of the testimony read in evidence in the Chancery Court case. (Hereto attached.)
15. Final Decree of the Chancellor.
16. Petition of Sedberrys to fix Counsel fees.
17. Answer and Cross-Petitions of Thomas G. Watkins, Trustee, and Jordan Stokes, Jr., Joseph R. West, R. H. Crockett.
18. Answer of Bankrupt and members of his family, to Cross-Petitions of Trustee, and Jordan Stokes, Jr., Jos. R. West, R. H. Crockett.
19. Abridgment of testimony taken upon the issues made up by the respective Petitions and Answers, to fix Counsel fees, filed before the Referee. (Hereto attached.)
20. Certification to District Court and Findings of Fact by the Referee, in matter of Counsel fees.
21. Order of Referee, allowing Counsel fees.
22. Petition to Review the Order of Referee, filed by Thos. G. Watkins, Trustee, and Jordan Stokes,

Praecipe—Thos. G. Watkins, et al.

Jr., Jos. R. West, R. H. Crockett.

23. Petition of Sedberrys to review Order.
24. Order of the District Court on Petitions to Review.
25. Memorandum Opinion embodying the Findings and Conclusions of the District Court.
26. Request to District Judge, filed by Jordan Stokes, Jr., Jos. R. West, R. H. Crockett, and Thomas G. Watkins, Trustee, for Findings of Fact, appearing otherwise than by the pleadings.
27. Order of District Judge adopting his Opinion as his Findings of Fact.
28. Order of the District Judge on request of Thos. G. Watkins, Trustee, Jordan Stokes, Jr., Jos. R. West, and R. H. Crockett, for Findings of Fact, appearing otherwise than by the pleadings.
29. Proof of claim of D. M. Ferry & Co.
30. Expense account of Jordan Stokes, Jr., and others.
31. Petition of Thos. G. Watkins, Trustee, Jordan Stokes, Jr., Jos. R. West, and R. H. Crockett, to revise the final decree of the U. S. District Court.
32. Petition of Sedberrys to revise the final decree of the U. S. District Court.
33. Exceptions to Final Decree, filed by Thos. G. Watkins, Trustee, Jordan Stokes, Jr., Jos. R. West, R. H. Crockett.
34. Petition of Thos. G. Watkins, Trustee, Jordan Stokes, Jr., Jos. R. West, and R. H. Crockett, for appeal and Assignments of Errors.
35. Order allowing appeal.
36. Appeal Bond and approval of same.
37. Citation.
38. All Minute Entries, Orders, and Decrees, and pleadings not hereinbefore specifically set out.
39. Copy of Precipe.

In fact, the entire record in the case will be sent up to the United States Circuit Court of Appeals, with the testimony as abridged, and you are requested and directed to make out the record on appeal in accordance with the above.

Thomas G. Watkins, Trustee,
Jordan Stokes, Jr.,
Joseph R. West,
R. H. Crockett,
By Clarence T. Boyd
Jno. R. Aust
Attorneys.

Citation and Notice of the Sedberrys

We acknowledge service of copy of the foregoing Precipe and abridgments of testimony attached thereto, for J. H. Sedberry and all other parties in interest.

Norman Farrell
Attorney for
J. H. Sedberry and others.

CITATION AND NOTICE OF THE SEDBERRYS OF INTENTION TO PRAY FOR AN APPEAL—Filed Dec. 8, 1920.

Gentlemen:

Please take notice that J. H. Sedberry, bankrupt herein, Mrs. Z. C. Sedberry, individually and as trustee, W. H. Sedberry, J. B. Sedberry, Catherine Sedberry Overall and Falley Overall hereby appeal from the order made herein on the 29th day of October, 1920, allowing Jordan Stokes, Jr., and associates an attorney's fee of Seventy Five Hundred ($7500.00) Dollars and Seven Hundred and Fifty ($750.00) Dollars expenses, to the Circuit Court of Appeals for the Sixth Circuit to be holden in and for said Circuit at the City of Cincinnati. Dated this December 7th, 1920.

Yours very truly,
Norman Farrell
Attorney for J. H. Sedberry et als.

To:
C. T. Boyd &
Jno. R. Aust, Esqs.
Attorneys for Jordan Stokes, Jr., and associates and Thos. G. Watkins, Trustee.

Service of the foregoing notice acknowledged this Dec. 8, 1920.

John R. Aust.

PETITION OF J. H. SEDBERRY, ET ALS., FOR APPEAL AND ASSIGNMENTS OF ERROR—Filed Dec. 13, 1920.

To the Hon. E. T. Sanford, District Judge of the United States District Court for the Middle District of Tennessee:

The above named bankrupt and Mrs. Z. C. Sedberry, as trustee and individually, W. H. Sedberry, J. B. Sedberry, Catherine Sedberry Overall and Falley Overall, conceiving themselves aggrieved by the final order and decree entered herein on the 29th day of October, 1920, in the above entitled proceeding, allowing Jordan Stokes, Jr., and associates the sum of Seventy Five Hundred ($7500.00) Dollars as attorneys' fees and Seven Hundred and Fifty ($750.00) Dollars as expenses to be paid out of the estate of these appellants, do hereby petition for an appeal from the said order and decree to the United States Circuit Court of Appeals for the Sixth Circuit, and pray that their appeal may be allowed and citation granted direct to Jordan Stokes, Jr., Joseph R. West, R. H. Crockett and Thos. G. Watkins, Trustee, commanding them and each of them to appear before the United States Circuit Court of Appeals for the Sixth Circuit, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record, proceedings and notice of said proceedings, duly authenticated, may be prosecuted to the United States Circuit Court of Appeals for the Sixth Circuit.

J. H. Sedberry
Z. C. Sedberry
W. H. Sedberry
J. B. Sedberry
Catherine S. Overall
Falley Overall

Norman Farrell
Attorney for J. H. Sedberry
et als.

ORDER:

The foregoing appeal is hereby allowed upon the giving by petitioners of an appeal bond in the sum of Five Hundred Dollars, with surety to be approved by me, conditioned that the petitioners shall prosecute their appeal to effect, and answer all costs if they fail to make their plea good.

This the 10th day of December, A. D. 1920.

Edward T. Sanford,
U. S. District Judge.

APPEAL BOND J. H. SEDBERRY, ET ALS., AND APPROVAL OF SAME—Filed December 21, 1920.

KNOW ALL MEN BY THESE PRESENTS That we J. H. Sedberry, Z. C. Sedberry, W. H. Sedberry, J B. Sedberry, Catherine Sedberry Overall and Falley Overall, as principals and J. C. Eggleston, as surety, are held and firmly bound unto the above named Thos. G. Watkins, Trustee, Jordan Stokes, Jr., Joseph R. West, and R. H. Crockett, of Nashville, Tennessee, in the sum of $500.00 for the payment well and truly to be made we bind ourselves, our administrators, successors and assigns, jointly and severally firmly by these presents.

Sealed with our seals and dated this 21st day of December, 1920.

Whereas, an order was entered in the above entitled proceeding in the District Court of the United States for the Middle District of Tennessee, on the 10th day of December, 1920, allowing an appeal and a revision of the above entitled proceeding by the United States Circuit Court of Appeals for the Sixth Circuit Court from said order and decree and ordered that a bond for costs on appeal and revision be fixed in the sum of $500.00.

Now, therefore, the condition of this obligation is such that if the above named J. H. Sedberry, et als., shall prosecute their appeal with effect and answer the damages and costs if they fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

J. H. Sedberry,
Z. C. Sedberry,
W. H. Sedberry,
J. B. Sedberry,
Catherine S. Overall,
Falley Overall
By Norman Farrell,
Attorney
J. C. Eggleston,
Surety.

Approved:
Sanford,
Judge.

Praecipe

CITATION—Filed Dec. 24, 1920.

The President of the United States to Thos. G. Watkins, Trustee, Jordan Stokes, Jr., Joseph R. West and R. H. Crockett, Greeting:

You and each of you are hereby cited and admonished to appear in the United States Circuit Court of Appeals for the Sixth Circuit in the City of Cincinnati on the 24th day of January, 1921, pursuant to the appeal duly obtained and filed in the Clerk's office of the District Court of the United States for the Middle District of Tennessee, wherein you are appellees and J. H. Sedberry, bankrupt, Z. C. Sedberry, W. H. Sedberry, J. B. Sedberry, Catherine Sedberry Overall and Falley Overall are the appellants, to show cause, if any there be, why the order and decree in said appeal mentioned should not be reversed and corrected, and why speedy justice should not be done to the parties in that behalf, and to do and receive that may appertain to justice to be done in the premises.

Witness the Honorable E. T. Sanford, United States Judge for the Middle District of Tennessee, on the 24th day of December, in the year of our Lord, 1920.

Edward T. Sanford,
District Judge.

PRAECIPE—Filed Dec. 31, 1920.

TO THE CLERK:

In the above entitled case, both parties have prayed and been allowed an appeal to the United States Circuit Court of Appeals for the Sixth Circuit. On December 21, 1920, Jordan Stokes, Jr., and others served on the Sedberrys, a Praecipe and abridgement of testimony attached.

Praecipe

The Sedberrys having likewise prayed an appeal, you are requested to see that the record on appeal shall also contain, in addition to such parts of the record as were called for by Thomas G. Watkins, Trustee, the following:

1. Citation and notice of the Sedberrys of their intention to pray for an appeal. This paper is dated Dec. 7, 1920, and acknowledged by opposite counsel December 8, 1920.
2. Petition of J. H. Sedberry, et als., for appeal and assignments of error.
3. Order allowing their appeal.
4. Appeal bond and approval of same.
5. Citation.
6. Copy of Praecipe.
7. Abridgement of testimony taken upon the issues of the attorney's fee claimed by Jordan Stokes before Hon. Lee Brock, Referee. Same to be added to that offered by opposite parties. (Said abridgement to be added, is hereto attached.) Exhibit "A," attached.
8. Memorandum opinion of Judge Sanford on the finding of facts proposed by Jordan Stokes, Jr., and others. Filed Nov. 20, 1920.
9. Notice of filing appeal bond by Sedberrys.
10. Assignments of error.

Yours truly,
J. H. Sedberry,
Z. C. Sedberry,
W. H. Sedberry,
J. B. Sedberry,
Catherine Sedberry Overall,
Falley Overall,
By Norman Farrell,
Attorney.

We acknowledge service of the foregoing praecipe and abridgement of testimony for Jordan Stokes, Jr., et als., and all other parties in interest.
This December 31, 1920.
John R. Aust.

NOTICE OF FILING APPEAL BOND BY SEDBERRYS—Filed December 31, 1920.

Gentlemen:

Please take notice that the bond for the appeal herein has been this day filed in the office of the Clerk of the District Court of the United States, for the Middle District of Tennessee and executed and given by J. H. Sedberry, et al., of ————, and J. C. Eggleston of ——.

Yours truly,
Norman Farrell,
Attorney for J. H. Sedberry, et als.

To:
C. T. Boyd &
John R. Aust, Esqs.,
Attorneys for Jordan Stokes, Jr.,
& Associates and Thos. G. Watkins, Tr.

Service acknowledged this Dec. 31, 1920.
Jno. R. Aust,
Clarence T. Boyd,
Solicitors for Trustee, et al.

ASSIGNMENTS OF ERROR—Filed December 24, 1920.

Now comes J. H. Sedberry, bankrupt and appellant, and Z. C. Sedberry, as trustee and individually, W. H. Sedberry, J. B. Sedberry, Mrs. Catherine Sedberry Overall and Falley Overall, likewise appellants and complainants, and file the following assignment of errors:

First. That the United States District Court for the Middle District of Tennessee erred in allowing any recovery to Mr. Stokes and associates or to the trustee for counsel fees and expenses, because of the champertous nature of their written contract with the trustee in bank-

ruptcy, whereunder said attorneys' services were performed and expenses incurred.

Second. That the Court erred in holding that the attorneys' fees and expenses, awarded by its decree of October 29, 1920, should be taxed against these appellants or paid out of the surplus of the estate left after paying creditors etc.

Third. That the Court erred, if the case was one wherein an attorney's fee should be paid out of the property or estate of these appellants, in awarding so great an amount as Seventy Five Hundred ($7,500.00) Dollars for the same and in awarding so great an amount as Seven Hundred and Fifty ($750.00) Dollars for expenses.

Fourth. The Court erred in holding that any expenses should be allowed to said attorneys on the record evidence.

Fifth. The Court erred in not holding that the attorneys' fees awarded herein should be paid exclusively out of the recovery had for said creditors, which was the amount of said creditors' claims with interest and court costs in the Chancery Court at Franklin, Tennessee.

Norman Farrell,
Attorney for J. H. Sedberry, et als.

STIPULATION OF COUNSEL AS TO RECORD—Filed February 10, 1921.

C. T. Boyd and John R. Aust, Attorneys of record for Thomas G. Watkins, Trustee, Jordan Stokes, Jr., Joseph R. West and R. H. Crockett, and Norman Farrell, Attorney of record for J. H. Sedberry, Mrs. Z. C. Sedberry, Trustee, and individually, J. B. Sedberry, W. H. Sedberry, Catherine Sedberry Overall and Falley Overall, agree and stipulate as follows:

WHEREAS, Thomas G. Watkins, Trustee, Jordan Stokes, Jr., Joseph R. West, R. H. Crockett, and J. H.

Sedberry and the members of his family, have filed Petitions under Section 24b of the Bankruptcy Act, to revise a decretal order of the United States District Court for the Nashville Division of the Middle District of Tennessee, entered in this cause on October 29, 1920; and,

WHEREAS, Thomas G. Watkins, Trustee, Jordan Stokes, Jr., Joseph R. West and R. H. Crockett, have also prayed and perfected an appeal under Section 25a of the Bankruptcy Act, from the same final decree; and

WHEREAS, J. H. Sedberry and others have also prayed and perfected an appeal under Section 25a of the Bankruptcy Act, from the same final decree; and,

WHEREAS, It is the understanding of said Attorneys, where a final decree is sought to be reviewed by both remedies—Petition to Revise, and also Appeal—that the correct practice is to make only one record: That being the record on appeal;

NOW, THEREFORE, In order to save duplication of records, and unnecessary expense of printing, it is agreed that the record shall be made up in accord with the respective Praecipes of Jordan Stokes, Jr., and others, and J. H. Sedberry and others.

It is further agreed and stipulated, that all matters embraced in said record on appeal, and which are called for as exhibits in either of said Petitions to Revise, may be, for the purpose of the hearing in the United States Circuit Court of Appeals for the Sixth Circuit, referred to as fully and as amply as if said record on appeal, as to said Petitions to Revise and Exhibits called for therein, were also the record especially made up under the Petitions to Revise.

It is further agreed and stipulated, that for the present, the costs and expenses of making up and printing this record on appeal, shall be divided equally between Thomas G. Watkins, Trustee, Jordan Stokes, Jr., Joseph R. West, and R. H. Crockett, on the one hand, and J. H. Sedberry, Mrs. Z. C. Sedberry, J. B. Sedberry, W. H. Sedberry, Catherine Sedberry Overall and Falley Overall, on the other hand, the payment of such costs and expenses ultimately, to await the result of the decision of said United States Circuit Court of Appeals.

It is further stipulated and agreed, that no technical objections will be raised in said United States Circuit Court of Appeals, as to the form of this record, or the use of it in the Appellate Court.

It is further stipulated and agreed, that this stipulation shall be incorporated in and become a part of the record.

Stipulation of Counsel as to Record

It is further stipulated and agreed, that a copy of this stipulation shall be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, for his guidance in the matter of printing the record, and that he is herein requested to withhold the printing of both of said petitions to revise, until the coming up of this record on appeal, as the same are incorporated herein.

It is further stipulated and agreed, that said transcript or record has been completed, and that said record to which this stipulation is attached as a part, is the agreed record, and correctly represents and sets out all records necessary to said respective appeals, or Petitions to Revise, and that the abridgement of the testimony correctly embraces the testimony desired by the respective parties.

It is further stipulated and agreed that this stipulation shall be and is hereby made a part of said record and is attached to said record, and shall be printed as a part of said record.

WITNESS OUR HANDS AT NASHVILLE, TENNESSEE, This February 7, 1921.

Clarence T. Boyd,
Jno. R. Aust,
Attorneys for
Thomas G. Watkins, Trustee,
Jordan Stokes, Jr.,
Joseph R. West,
R. H. Crockett.

Norman Farrell,
Attorney for
J. H. Sedberry, Bankrupt,
Mrs. Z. C. Sedberry, Trustee,
Mrs. Z. C. Sedberry,
J. B. Sedberry,
W. H. Sedberry,
Catherine Sedberry Overall,
Falley Overall.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE,
NASHVILLE, DIVISION.

I, H. M. Doak, Clerk of the United States District Court in and for the District aforesaid do hereby certify that the foregoing is a true full and complete transcript of the record in the matter of J. H. Sedberry, Bankrupt, No. 5,206 as the same is called for by the praecipe on behalf of Thomas G. Watkins, Trustee, et al., as appears at page 252 of the printed transcript and the praecipe on behalf of the Bankrupt contained at page 257 of the transcript; except that the testimony has been abridged by counsel for both parties, and that the record is made up in accordance with the stipulation of counsel as to same contained at page 260 of the transcript.

Witness my hand and official seal at office this 15th day of February, 1921.

H. M. Doak, Clerk.
By E. L. Doak, Deputy Clerk.

(SEAL)

NOTICE.

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT.

IN RE: PETITION OF J. H. SEDBERRY, FOR REVIEW.	}	No. 3504 IN BANKRUPTCY.

To C. T. Boyd and John R. Aust, Attorneys for Thos. G. Watkins, Trustee, in Bankruptcy for J. H. Sedberry, and for Messrs. Jordan Stokes, Jr., J. R. West and R. H. Crockett;

You are hereby notified that on the 20th day of November, 1920, at twelve o'clock M., I will file in the Clerk's office of the U. S. Circuit Court of Appeals for the Sixth Circuit, in the City of Cincinnati, an amended and supplemental petition for review in the above entitled cause, a copy of which amended and supplemental petition is hereto attached as a part of this notice, and I will then ask to have the same incorporated with the original petition and the case docketed and the necessary orders made therein to have such case set down for hearing.

Norman Farrell
Attorney for J. H. Sedberry, Z. C. Sedberry, J. B. Sedberry, W. H. Sedberry, Catherine Sedberry Overall, Falley Overall.

I hereby accept service of the above notice and acknowledge receipt of a copy of the above petition to review this 19th day of November, 1920.

Jno. R. Aust
Attorney for Thos. G. Watkins, Tr., Jordan Stokes, Jr., J. R. West & R. H. Crockett.

AMENDED AND SUPPLEMENTAL PETITION TO REVISE OF J. H. SEDBERRY ET AL.,—Filed Nov. 20, 1920.

To the Judges of the United States Circuit Court of Appeals Sixth Circuit:

Your petitioners, J. H. Sedberry, bankrupt, Z. C. Sedberry, individually and as trustee, J. B. Sedberry, W. H. Sedberry, Catherine Sedberry Overall, and her husband, Falley Overall, respectfully show:

That on November 18, 1920, they filed in this court their petition to revise in bankruptcy an order and judgment entered October 29, 1920, by the United States District Court for the Nashville Division of the Middle District of Tennessee.

In said petition they alleged that they had on November 12, 1920, filed in said District Court, in accordance with its rules, a petition asking for the Court to make and file a written statement or Findings of Fact. A copy of said petition was attached as an exhibit to their petition to revise. It was further stated that, at the time of presenting and making said petition to revise, the District Court had not acted on said petition of November 12, 1920, being at the time in the Eastern Division of said District.

Afterwards, to-wit, on November 17, 1920, said District Court did act on and grant said petition of November 12, 1920, and did make and file a written finding of facts, by making its written opinion of October 29, 1920, such finding of facts, all as shown by its order and judgment entered and filed in the clerk's office of said district court on November 18, 1920, as shown by certified copy of said order attached and made exhibit "A" and a part hereof.

Premises considered petitioners pray that their original petition to revise be amended and supplemented so as to sho wsuch facts and that this amended and supplemental petition be treated as and as part of their original petition to revise now on file in this Court. Grant general relief.

Norman Farrell
Attorney for Petitioners.

United States of America,
Middle District of Tenn.,
Nashville, Tenn.

I, Norman Farrell, do make oath and say that I am the attorney for the petitioners; am acquainted with the

facts stated in said petition; that the same are true; that petitioners are out of said district and in Arkansas and that affiant makes this affidavit for such reason.

Norman Farrell.

Sworn to and subscribed before me at Nashville, Tenn., this November 19th, 1920.

H. M. Doak,
Clerk U. S. District Court
Middle District of Tenn.,
Nashville Division.
By C. T. Vester,
Deputy Clerk.

(seal)

EXHIBIT "A" ORDER—Entered Nov. 18, 1920.

IN THE UNITED STATES DISTRICT COURT AT NASHVILLE, TENNESSEE.

In the matter of
J. H. Sedberry,
Bankrupt.

No. 5206
In Bankruptcy.

IN RE PROPOSED PETITION TO REVISE FINDINGS OF FACT.

In response to the request of J. H. Sedberry et al., as set forth in their petition filed November 12, 1920, that I should make and file necessary findings of fact in the matter of their proposed petition to revise in matter of law the decretal order entered herein October 29, 1920, in regard to the fees and expenses of counsel for the trustee in bankruptcy, I find that the necessary findings of fact in such matter upon which such order was based, made to appear otherwise than solely by the pleadings

in the matter, are as set forth in my memorandum opinion handed down October 29, 1920, on the petitions to review order of the referee as to fees of counsel for the trustee, on which the order in question was based. And I therefore adopt as the findings of fact now made for the purposes of the proposed petition to revise in matter of law all statements of fact contained in said memorandum opinion of October 29, 1920, with the same force and effect as if set out and incorporated *in extenso* herein.

This finding of facts will be filed by the clerk in his office.

ENLARGEMENT OF TIME.

And on the application of said J. H. Sedberry et al and for good cause shown, it is ordered that the time allowed by rule 34 of the United States Circuit Court of Appeals for the Sixth Circuit for the filing of the petition to revise be, and is, enlarged for a period of twenty additional days.

This November 17, 1920.

Sanford
U. S. District Judge.

United States of America
Middle District of Tennessee.
Nashville Division

I, H. M. Doak, Clerk of the District Court of the United States, in and for said district, do hereby certify that the foregoing typewriting is a true, full and complete copy of an order made and entered in case of J. H. Sedberry, Bankrupt No. 5206, as same appears of record and on file in my office, and was filed on November 18th, 1920.

Witness my hand and seal of office at Nashville, this the 19th day of November, 1920.

H. M. Doak,
Clerk.
By C. T. Vester,
Deputy Clerk.

(seal)

Proceedings in the United States Circuit Court of Appeals for the Sixth Circuit.

APPEARANCE OF COUNSEL—Filed November 20, 1920.

No. 3503.

Arthur B. Mussman, Clerk of said court:

Please enter my appearance as counsel for the petitioners.

John R. Aust and Clarence T. Boyd.

APPEARANCE OF COUNSEL—Filed November 20, 1920.

No. 3504.

Arthur B. Mussman, Clerk of said court:

Please enter my appearance as counsel for the petitioner.

Norman Farrell,
46-48 Noel Bldg., Nashville, Tenn.

CAUSES ARGUED AND SUBMITTED—June 14, 1921.

Before Knappen, Denison and Donahue, C. J. J.

These causes are argued by Mr. Clarence T. Boyd and Mr. John R. Aust on behalf of Jordan Stokes, Jr., et al and by Mr. Norman Farrell on behalf of J. H. Sedberry, Bankrupt, et al and are submitted to the court.

DECREE—Filed October 14, 1921.

No. 3503.

This cause came on to be heard on a petition to revise and an appeal from an order made the 29th day of October, A. D. 1920, in the matter of J. H. Sedberry, Bankrupt, by the District Court of the United States for the Middle District of Tennessee sitting as a court of Bankruptcy, and was argued by counsel.

On consideratioon Whereof, it is now here ordered, adjudged and decreed by this court, that the said order of said District Court be and the same is hereby modified to the extent indicated in the opinion of this court and the cause is remanded to the said District Court for further proceedings in accordance with said opinion. The Sedberrys will recover their costs. The appeal is hereby dismissed.

DECREE—Filed October 14, 1921.

No. 3504.

This cause came on to be heard on a petition to revise and an appeal from an order made the 29th day of October, A. D. 1920, in the matter of J. H. Sedberry, Bankrupt, by the District Court of the United States for the Middle District of Tennessee sitting as a court of Bankruptcy, and was argued by counsel.

On Consideration Whereof, it is not here ordered, adjudged and decreed by this court, that the said order of the said District Court be and the same is hereby modified to the extent indicated in the opinion of this court and the cause is remanded to the said District Court for further proceedings in accordance with said opinion. The Sedberrys will recover their costs. The appeal is hereby dismissed.

OPINION—Filed October 14, 1921.

JORDAN STOKES, Jr., et al,
Petitioners and Appellants,

No. 3503. vs.

J. H. SEDBERRY, et al,
Respondents and Appellees; and

J. H. SEDBERRY, Bankrupt, et al,
Petitioners and Appellants,

No. 3504. vs.

THOMAS G. WALKER, Trustee, et al,
Respondents and Appellees.

Petitions to revise an order of, and appeals from, the District Court of the United States for the Middle District of Tennessee.

Submitted June 14, 1921.
Decided October 14, 1921.

Before Knappen, Denison and Donahue, Circuit Judges.

Denison, Circuit Judge:

Sedberry, the bankrupt, caused the title to a farm and the personal property thereon to be conveyed to his wife. At a later date, he became financially involved and filed a voluntary bankruptcy petition. The trustee in bankruptcy entered into a contract with Mr. Stokes, an attorney, to endeavor to recover the property. Accordingly, Mr. Stokes, in the name of the trustee, filed a bill in the state chancery court alleging that the conveyance to Mrs. Sedberry was in fraud of creditors, and finally obtained a decree accordingly. The property which Mrs. Sedberry held and which was affected by this decree was worth about $100,000. The total claims against the bankrupt estate were about $21,500. The contract with Mr. Stokes provided for a contingent fee of fifty per cent. of the amount recovered, and specified that he should advance and pay all the expenses of the litigation without liability therefor on the part of the trustee in case of failure. The questions upon which controversy arose and which now remain important were: whether the fifty per cent. contract was valid; if it was not, whether the attorney could recover the value of his services as upon a quantum meruit; if he could, whether the fee allowed to him should be charged againts the one hundred per cent. otherwise to be disbursed to creditors or against the surplus to be returned to Mrs. Sedberry; and what the amount of the fee should be. The action of the referee in all these matters was taken before the district judge on petition to review, and each party complains of the action of the district judge, the complaints being both by appeals and by petitions to revise.

The disposition of each one of the four questions above stated was a step in the administration of the estate rather than a controversy arising as between adverse parties. Both appeals must, therefore, be dismissed; and the cases stand for hearing upon the petitions to revise (Davidson vs Friedman, C. C. A., 6, 140 Fed., 853; Ohio Co. vs Switzer, C. C. A., 6, 153 Fed., 362; Re Kinnane, C. C. A., 6, 242 Fed., 769, 771).

The attorney's contract with the trustee is attacked for champerty and maintenance, and as being, therefore, void. The question is elaborately argued, but we agree with the district judge that it need not be decided. The contract was, for other reasons, invalid. It is not suggested that the trustee would have power on his own ac-

count to make such a contract, but it is said to have been authorized in advance by an order of the referee, and its validity is claimed to find sufficient support in this authority. The referee's order was not made at a meeting of the creditors, but wholly ex parte. Neither the creditors, who would very probably have to pay the fee, nor the bankrupt, who would have to pay it if the creditors did not, had any notice in the matter. The value to the estate of the services of a trustee's attorney is, ordinarily, to be determined by the court when the estate is finally settled (Section 62). If there are exceptions to this rule, and if the trustee may ever make a contingent fee contract in advance which may be valid because of approval at the time by the court or referee, we find no provision in the bankrupt law which could give authority for such an order when made as here, without any notice to any of the parties adversely interested. We conclude that the contract was invalid, and that there could be no recovery by virtue of it.

Both the referee and the district judge allowed Mr. Stokes a fee upon the quantum meruit theory. This result is attacked because the attorney insisted and is still insisting upon his right under the contract, and because the contract was champertous, and, therefore, he could have no recovery whatever. As between ordinary parties, there is ample authority for this position (Roller vs Murray, 112 Va., 780), and, for the purposes of this decision, we assume that except for the considerations to be stated, that rule would obtain here, and also assume, without deciding, that the contract was champertous. We are not satisfied that an entire forfeiture of the fee must follow, in a court of bankruptcy and under the special circumstances here existing. We understand that the tendency of champerty and maintenance to stir up litigation which otherwise would not be brought, is the reason why contracts tainted therewith are so contrary to public policy that there can be no recovery for the value of services rendered under them. This reason applies with full force to unsupervised contracts of attorneys with individuals acting in their own right; but not only was the proposed bringing of this suit approved by the referee, but every such contract, made between attorneys and a trustee in bankruptcy, is made with knowledge that, primarily, the referee and, ultimately, the district court must approve and must make an award before payment can be made. Each contract therefore, in effect, has written into it "subject to the approval of the court." We can not think that such a contract

with this limitation and with this preliminary approval is so inherently vicious in its tendency as to forbid the court finally to award to the attorney such compensation as it thinks right. It follows that Mr. Stokes was entitled to the reasonable value of his services.

Whether the fee should be charged against the fund devoted to pay the creditors or should be added to that fund and charged against the surplus, is a question of difficulty and often may be of importance. The district judge here allowed a fee of $7,500.

In Tennessee, a creditor or a group of creditors claiming that a debtor's conveyance of his property is fraudulent as to them, can file a bill in the nature of a creditors' bill and have their debts established as a lien against the property superior to the fraudulent conveyance. This is the extent of their right and remedy. The counsel fees must be paid out of the debts recovered and can not be charged against the surplus (Shan. Code, Sections 6097, 6099; Bank vs Hettler, 101 Tenn., 73; Douglas vs Bank, 13 Pickle, 148). Such is also the general rule (20 Cyc., 825).

Did it make a difference of $7,500 to these creditors and to Mrs. Sedberry whether the remedy was given through the state courts only or through bankruptcy? The grantee who has held property for twenty years—as Mrs. Sedberry had done in this case—with knowledge that creditors may sometime successfully complain, may—ordinarily—anticipate that the surplus over the amount of the debts, at the time when, if ever, the attack comes, will at least be immune. Such is the law of the state, and no direct provision of the bankruptcy law has been violated. It does not necessarily follow that the indirect effect of the bankruptcy law, when invoked, may not burden and perhaps exhaust this surplus, but that law should not be interpreted to bring such a result unless that is its reasonably clear and certain effect. Two sections of the act deal with the remedies of creditors where there has been a transfer with intent to defraud. Section 67e refers only to such transfers as have been made within four months. It pronounces them null and void as against the creditors, and declares that the property shall be and remain a part of the assets of the estate of the bankrupt and shall pass to the trustee, whose duty it shall be to recover and reclaim the same. This section is of no avail, where the transfer is more than four months old, but in such case the procedure can be only under Section 70e, which provides that the trustee may avoid any transfer by the bankrupt of his property

which any creditor of such bankrupt might have avoided. There seems to be a distinct difference in the theory of the two sections. It is the theory of Section 67 that the bankruptcy reaches back four months, and that any preference or fraudulent conveyance made within that time is not a thing accomplished but is inchoate and is retroactively obliterated. The property conveyed is, therefore, always a part of the bankrupt's estate. It is the theory of Section 70e that the bankruptcy law should not by indirection take away from any creditor any right which he has under the law of the state, and its substance seems to be only that the remedy of the creditor must be pursued by and in the name of the trustee. In our judgment, these considerations justify the conclusion that when it is said in Section 70a(4) that the trustee shall be vested by operation of law with the title of the bankrupt to all property transferred by him in fraud of creditors, direct reference is had only to such transfers as have been invalidated by the bankruptcy act itself in Section 67e; and that even if the language should be thought to reach a transfer which the trustee might avoid under Section 70e by subrogation to the rights of some creditor, the only "property" to which it could refer would be the property which as between the bankrupt and these creditors they had a right to subject to their claims—viz., enough to pay their debts. If a man transfers a $100,000 farm so that it may not be reached by his creditors who have $20,000 of claims, it is true in a very fair sense that the "property" which he transfers "in fraud of creditors" is the property which they had the right to get, and not the surplus.

Whether property which the assignee recovers under Section 70e, in the special right of some particular creditors, should be distributed in bankruptcy only to them or should be distributed, also, among creditors who could not have avoided the transfer, is a question which is now immaterial. We are concerned only with the extent of the recovery (see Blobe Bank vs Martin, C. C. A., 6, 193 Fed., 841, S. C., 236 U. S., 288; In re Stuart, C. C. A., 6, 272 Fed., 938, 941).

The last part of Section 70e, as applied to the facts in this case, helps us to interpret. For the purpose of such an action as was had here, the trustee may resort to the state court or to the bankruptcy court. The counsel fee being a part of the expenses of the trustee, the state court could have no jurisdiction to fix its amount, and yet, if resort was had to the state court to avoid the transfer, only that could could fix the amount which the de-

fendants must pay in order to have the case dismissed, or for which, under the Tennessee statute, the creditor should have a lien. In the instant case, the state court could award a lien or recovery of only $21,500, while the bankruptcy court, upon the same facts, awarded $29,000. Certainly, it was not intended that the statutory right of election between the courts should involve such a difference in the result.

We do not overlook that the form of the decree by the state court purported to transfer the whole title to the trustee; but the form which happened to be taken by the state court decree can not control either the substantial right or the construction of the federal statute. Whatever the form of the decree, the trustee would doubtless be required to make a release of his lien or a conveyance of his title—whichever the decree had given—upon payment or tender to him of the proper amount.

Our conclusion is that under Section 70e, the property to be reached by the trustee is only that interest which would have satisfied the demands of the creditors who might have avoided the transfer, and that the recovery can not include the costs of the bankruptcy administration. The rightfulness of this conclusion is indicated by the discussion by Judge Lowell (Dist. Mass.) in Re Muller, 101 Fed., 413, and by Judge Clark (East. Dist. Tenn.) in Bush vs Storage Co., 136 Fed., 918. The court below relied on Rogers vs Page, C. C. A., 6, 140 Fed., 596, 606, S. C., 149 Fed., 194, S. C., 211 U. S., 580, to the effect that such a counsel fee should be paid out of the surplus which would be returned to the grantee or bankrupt. If we are correct as to the substantial distinction in this respect between Sections 67e and 70e, the inapplicability of Rogers vs Page appears, for that suit was brought under Section 67e.

We also observe that, from our stated conclusion, it would follow that where a fraudulent conveyance was within four months and there is a surplus above the claims of creditors, the bankruptcy administration expenses can be charged against the surplus, while, if the conveyance was more than four months old, this can not be done, and that this seems an anomaly. However, the Bankruptcy Act is full of anomalies and contradictions, if every clause is literally applied. Further, we think this suggestion of conflict is only superficial, and that there is good reason for the distinction. Such a conveyance, made within four months, is forbidden equally in every state by the express terms of the uniform system

of bankruptcy which Congress has established, and it is logical to consider, as the estate of the bankrupt in the district court for distribution, all the property, the presence of which in that court is required by the direct operation of the law itself. On the other hand, if the conveyance is more than four months old, it is reached only through calling upon some state law for aid; its liability to attack is no part of the uniform bankruptcy system; in some states such attack would bring general relief to creditors, in others partial relief, in others none. It is fitting that the administration of such a feature shall conform fully to the state law—that the same law which creates the right shall measure the remedy.

It is said that in this case payment of the counsel fee should be made out of the surplus, because there was an understanding to that effect between Mr. Stokes and the Sedberrys and because the present controversy was initiated by the filing of a petition in the bankruptcy court by the Sedberrys, which petition was upon that theory. As to the second point, it should be observed that the district judge expressly permitted the Selberrys, upon the argument, to change their position and to claim that the fee should be paid by the creditors; this would fully justify an amendment of the Sedberrys' petition nunc pro tunc, if that were necessary. As to the first point, it appears that though there was an understanding to this effect, yet that it was reached as a part of a general compromise arrangement then entered into, in connection with which the Sedberrys understood that Mr. Stokes would ask the allowance of only reasonable compensation, while in fact Mr. Stokes then intended to insist upon the fifty per cent. contract but did not disclose to the Sedberrys its existence. The Sedberrys ought not to be bound by their part of the proposed compromise.

So far as the amount of the fee involves the discretion of the trial judge or his conclusion of fact as to what was reasonable, we can not review it upon a petition to revise in matter of law. The opinion of the trial judge, which he expressly made his finding of fact, discloses the reasons or rules which controlled him in reaching the amount, and we may observe what these were. We think that the supposedly rather small chance of successful outcome and the fact that for lack of assets the attorney could get no pay unless he succeeded, rightfully tend to justify a liberal fee; also, the amount of the recovery is a material element; but the district judge considered the amount of

recovery as $29,000, while we think the amount should be treated as $21,500.[1]

In view of the changes in the situation which our conclusion makes necessary, the award should be vacated, leaving the district judge at liberty to use his discretion in again fixing the amount, with due regard to the modified character of the recovery and the change in the source from which payment must be made.

In connection with the amount, complaint is made because the trustee was allowed $750 for expenses without such itemization as the statute requires. We agree with the district judge that the Sedberrys can not well be heard to raise this question. The trustee asked for about $1,200 for the expenses of this litigation. There was no sufficient statement of detail and the Sedberrys, on that ground, objected to its allowance. The referee held the charge not properly itemized, but thought $750 would be a proper amount; and said he would make that allowance, but if any party still thought there ought to be further itemization, application might be made and he would consider it. No further application was made. This was, in effect, the suggestion of a compromise, for the sake of avoiding further trouble and expense, and the silence of the Sedberrys should be taken as an acceptance of the offer.

We have examined the complaints made by Mr. Stokes and the trustee in their petition to revise. So far as these are not already covered hereby, we think they are without substantial merit.

The order under review should be modified to the extent here indicated, and the case is remanded for that purpose. The Sedberrys will recover their costs.

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[1] All figures herein are approximate, and intended only to identify the sum involved, not to fix it.

CERTIFICATE OF CLERK.

United States Circuit Court of Appeals for the Sixth Circuit.

I, Arthur B. Mussman, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the cases of Jordan Stokes, Jr., et al, Petitioners and Appellants, vs J. H. Sedberry et al, Respondents and Appellees, No. 3503 and J. H. Sedberry et al, Petitioners and Appellants, vs Thomas G. Watkins, Trustee et al, Respondents and Appellees, No. 3504, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of said court, at the City of Cincinnati, Ohio, this 18th day of November, A. D. 1921.

(Seal.)

.....,

Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Sixth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Jordan Stokes, Jr., Joseph R. West, R. H. Crockett and Thomas G. Watkins, Trustee, are petitioners and appellants, and J. H. Sedberry, Z. C. Sedberry, J. B. Sedberry, W. H. Sedberry, Catherine Sedberry Overall and Falley Overall, are respondents and appellees, No. 3503; and J. H. Sedberry, Bankrupt, Z. C. Sedberry, W. H. Sedberry, J. B. Sedberry, Catherine Sedberry Overall and Falley Overall, are petitioners and appellants, and Thomas G. Watkins, Trustee, Jordan Stokes, Jr., Joseph R. West and R. H. Crockett are respondents and appellees, No. 3504, which suit was removed into the said Circuit Court of Appeals by virtue of petitions to revise an order of, and appeals from, the District Court of the United States for the Middle District of Tennessee, and we, being willing for certain reasons that the said cause and the record and proceedings thereof should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the second day of February, in the year of our Lord one thousand nine hundred and twenty-two.

WM. R. STANSBURY,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 28,645. Supreme Court of the United States, October Term, 1921. No. 690. Thomas G. Watkins, Trustee, et al., vs. J. H. Sedberry et al. Writ of Certiorari. Filed Feb 10, 1922. Arthur B. Mussman, Clerk.

United States Circuit Court of Appeals for the Sixth Circuit, *ss.*

I, Arthur B. Mussman, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the transcript of the record of the proceedings of this court in the within entitled case heretofore certified by me for filing in the Supreme Court of the United States was correct and complete as the same then appeared in this court.

In pursuance of the command of the foregoing writ of certiorari I now hereby certify that on the 10th day of February, A. D. 1922 there was filed in my office a stipulation in the above entitled case in the following words, towit:

United States Circuit Court of Appeals, Sixth Circuit.

No. 3503.

ORDAN STOKES, JR., JOS. R. WEST, R. H. CROCKETT, THOS. G. WATKINS, Trustee, Petitioners and Appellants,

vs.

I. SEDBERRY, Z. C. SEDBERRY, J. B. SEDBERRY, W. H. SEDBERRY, Catherine Sedberry Overall, and Falley Overall, Respondents and Appellees.

and

No. 3504.

H. SEDBERRY, Bankrupt; Z. C. SEDBERRY, J. B. SEDBERRY, W. H. Sedberry, Catherine Sedberry Overall, and Falley Overall, Petitioners and Appellants,

vs.

OS. G. WATKINS, Trustee; JORDAN STOKES, JR., JOS. R. WEST, R. H. CROCKETT, Respondents and Appellees.

In the above entitled causes, in compliance with the practice in the preme Court of the United States, and the United States Circuit urt of Appeals for the Sixth Circuit, we do hereby stipulate and ree that the record heretofore filed in the office of the Clerk of the preme Court of the United States, on the application for the writ certiorari, may be taken as the return to the writ of certiorari sued out of the Supreme Court of the United States under date of ebruary 6, 1922.

This February 8, 1922.

CLARENCE T. BOYD,
Attorney for Jordan Stokes, Jr., Jos. R. West, R. H. Crockett, Thos. G. Watkins, Trustee.

NORMAN FARRELL,
Attorney for J. H. Sedberry, Z. C. Sedberry, W. H. Sedberry, J. B. Sedberry, Catherine Sedberry Overall, Falley Overall.

I further certify that the above is a true and correct copy of said ipulation and of the whole thereof.

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Witness my official seal, signature and the seal of said Circu
Court of Appeals at the City of Cincinnati in said circuit this 10
day of February, A. D. 1922.

[Seal of United States Circuit Court of Appeals, Sixth Circuit.

ARTHUR B. MUSSMAN,
Clerk United States Circuit Court of
Appeals for the Sixth Circuit.

[Endorsed:] File No. 28,645. Supreme Court U. S., Octobe
Term, 1921. Term No. 690. Thomas G. Watkins, Trustee, et al
Petitioners, vs. J. H. Sedberry et al. Writ of certiorari and return
Filed Feb. 13, 1922.

Office Supreme Court, U. S.
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WM. R. STANSBURY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 690. 248

THOMAS G. WATKINS, TRUSTEE, ET AL., PETITIONERS,

vs.

J. H. SEDBERRY ET AL.

Reply to Answer to Petition for Certiorari Correcting Erroneous Statements in Respondents' Answer and Brief.

Come now the petitioners, through leave first had and obtained in open Court, and respectfully show to the Court as follows:

I. That this brief memorandum is filed for the purpose of correcting three erroneous statements of a material fact in the answer and brief to the petition for certiorari, which erroneous statements are in direct conflict with the record. These statements are to the effect that in the lower court no plea of the statute of limitations was filed, whereas, as a matter of fact, such a plea was filed and relied upon before the Chancellor, in the Chancery Court case, and the Chancellor's decision was adverse to the Sedberrys.

II. These erroneous statements are as follows:

At the middle of page 11 of respondents' answer, the following language is used:

"In none of these answers was there any plea of the statute of limitations."

Again, at the top of page 18, *idem.*, the following occurs:

"Furthermore, no statute of limitations was pleaded to the Franklin suit." (Rec., pp. 41, 46.)

Again, on page 31, is the following:

"The fact is the statute of limitations was *not* pleaded and the suit went on." (Rec. pp. 41-46.)

* * * * * * *

"So whether it was a suit to set aside a direct or resulting trust it would equally have been barred."

That the plea by way of amendment to respondents' answer was filed is shown by the following certified copy of the record of the Chancery Court at Franklin, Tennessee, the original of which is filed in this honorable Court:

IN THE CHANCERY COURT AT FRANKLIN, TENNESSEE.

THOS. G. WATKINS, Trustee, &c.,

vs.

J. H. SEDBERRY et al.

Come the defendants, Mrs. Z. C. Sedberry, individually, and as Trustee, W. H. Sedberry, J. Bernard Sedberry, Falley Overall and Catherine Overall, and by way of amendment to their answer heretofore filed in this cause, by leave of the Court first had and obtained, for plea to the bill filed against them in this cause, say:

That Mrs. Z. C. Sedberry, Trustee, and all of defendants herein named individually, have occupied, held and owned and used the farm of — acres, described in complainant's bill, as lying in the 11th Civil District of Williamson County, Tennessee, for more than seven years next before the filing of complainants' bill, and have held possession of same openly, notoriously and adversely by and under deed of conveyance, conveying an estate in fee, without any claim, at law or in equity by complainants within that time; and complainant and those claiming under him have neglected to avail themselves of the benefits to any title in law or equity, by action at law or in equity effectively prosecuted against said defendants in possession, under said recorded assurance of title.

And defendants doth aver and plead accordingly.

Z. C. SEDBERRY,
Trustee,
Z. C. SEDBERRY,
J. BERNARD SEDBERRY,
W. H. SEDBERRY,
FALLEY OVERALL,
CATHERINE OVERALL,
By J. C. EGGLESTON &
AVERY HANDLEY,
Solicitors for Defendants.

I, L. W. Buford, Clerk and Master of the Chancery Court of Williamson County, Tenn., do certify that the foregoing is a true, correct, and perfect copy of the plea filed in said court on July 9, 1919, in the cause of Thos. J. Watkins, Trustee, vs. J. H. Sedberry et al., by defendants, Mrs. Z. C. Sedberry, individually and as trus-

tee, W. H. Sedberry, J. Bernard Sedberry, Falley Overall and Catherine Overall, as the same now appears of record on file in my office.

Witness my hand and official Seal at Office, at Franklin, Tennessee, this 25th day of January, 1922.

(Signed) L. W. BUFORD,
[SEAL.] *Clerk and Matser.*"

It is respectfully submitted that this is a sufficient answer to the above erroneous statements.

C. C. CALHOUN,
JOHN R. AUST,
CLARENCE T. BOYD,
JORDAN STOKES, JR.,
JOS. R. WEST,
Attorneys for Trustee et al.

Office Supreme Court, U.S.
FILED
JAN 14 1922
WM. R. STANSBURY
CLERK

No. 690248

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921

THOS. G. WATKINS, Trustee
JORDAN STOKES, JR.
JOS. R. WEST
R. H. CROCKETT

Petitioners

Vs.

J. H. SEDBERRY
Z. C. SEDBERRY
J. B. SEDBERRY
W. H. SEDBERRY
CATHERINE SEDBERRY OVERALL
FALLEY OVERALL

Respondents

Petition of Thos. G. Watkins, Trustee in Bankruptcy of J. H. Sedberry, and Jordan Stokes, Jr., Joseph R. West, and R. H. Crockett, for Writ of Certiorari to the Circuit Court of Appeals for the Sixth Circuit.

Hermitage, Nashville

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1921

THOS. G. WATKINS, Trustee
JORDAN STOKES, JR.
JOS. R. WEST
R. H. CROCKETT

Petitioners

Vs.

J. H. SEDBERRY
Z. C. SEDBERRY
J. B. SEDBERRY
W. H. SEDBERRY
CATHERINE SEDBERRY OVERALL
FALLEY OVERALL

Respondents

Petition of Thos. G. Watkins, Trustee in Bankruptcy of J. H. Sedberry, and Jordan Stokes, Jr., Joseph R. West, and R. H. Crockett, for Writ of Certiorari to the Circuit Court of Appeals for the Sixth Circuit.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners respectfully show to the Court as follows:

1. That they have heretofore filed a more lengthy petition, and brief and argument in support thereof, to

which reference is here made, and this petition will be a brief summary of the case, and the reasons why the petition should be granted, omitting citation of authorities and record, as they are fully covered in the original petition and brief.

2. J. H. Sedberry filed a *voluntary* petition in bankruptcy on August 24, 1917, scheduling no assets, and was duly adjudged a bankrupt. Thos. G. Watkins was elected and qualified as trustee of this estate.

3. There being no assets, the trustee requested petitioner Stokes to make an investigation, with the understanding that he would be employed upon a contingent basis, if the investigation warranted.

4. At the request of the trustee, petitioner Stokes advanced money to pay stenographic costs, and expenses of examining the bankrupt and members of his family, and conducted the investigation. After the investigation, petitioner Stokes advised the trustee that he was of the opinion that the bankrupt had failed to schedule assets, and was fraudulently concealing them: that the bankrupt was the real owner of a farm in Williamson County, Tennessee, together with the personal property and crops thereon, and also other property. All of which property was particularly inquired about in the examination of the bankrupt and members of his family, and title to which was afterwards vested in the trustee.

5. The trustee in bankruptcy filed a petition before the Referee, asking for authority to employ petitioner Stokes upon a contingent basis. The Referee granted this petition and entered a decree authorizing and instructing the trustee to enter into a contingent contract with petitioner Stokes. A written contract upon the basis of fifty per cent (50%) was entered into between the trustee and petitioner Stokes, and was duly approved by the Referee.

6. Petitioner Stokes associated petitioner West with him, and a Bill was filed in the Chancery Court of Williamson County, Tennessee, to have the Court declare the title to the farm, personal property and growing crops thereon, among other properties, to have been in the bankrupt and have passed, by operation of law, to the trustee in bankruptcy.

About two (2) years after the contingent fee contract was made, and the filing of this suit, and after investigation of authorities and taking of proof, the case was tried before the Chancellor in the State Court, and the title to the farm, personal property, and growing crops thereon, together with other property, *was decreed by the State Court, to have always been in the bankrupt, and passed, by operation of law, to his trustee in bankruptcy; and that the bankrupt's wife and family did not have, and never had, any interest in this property.*

There was no appeal from this decision of the Chancellor. Under this decision, title to Ninety-nine Thousand, Seven Hundred and Forty-three and 01/100 ($99743.01) Dollars, of property belonging to the bankrupt, was vested in the trustees, and is now in his hands for distribution.

After the contingent fee contract was entered into, creditors filed claims aggregating approximately Twenty-one Thousand, Five Hundred ($21,500) Dollars.

7. The bankrupt and his family filed a petition before the Referee, *asking that the entire amount of debts be ascertained, to the end that they be paid in full, and in addition, that the amount of the costs of administration, including attorney's fees for the Trustee, be ascertained, that they might be paid.*

To this petition, answers and cross petitions were filed by petitioners, setting up the contingent contract between

the trustee and petitioner Stokes, providing for fifty per cent (50%) of the amount of the assets.

FINDINGS OF THE REFEREE.

The Referee held the contract not champertous, but invalid, because unauthorized, and allowed a fee of Ten Thousand ($10,000) Dollars, and Seven Hundred and Fifty ($750.00) Dollars, expenses, to petitioner Stokes, to be paid out of the surplus.

Petitions to review this order were filed by petitioners, and later by the bankrupt and others, and the cause removed to the District Court.

DISTRICT COURT JUDGMENT.

The District Court held the contract invalid on account of lack of notice to the bankrupt and his family, and allowed a fee of Seventy-five Hundred ($7,500.00) Dollars, and Seven Hundred and Fifty ($750.00) Dollars, expenses, to be paid out of the surplus.

Appeals and petitions to review this order were perfected by petitioners, and later by the bankrupt and family, to the Circuit Court of Appeals for the Sixth Circuit.

JUDGMENT OF THE CIRCUIT COURT OF APPEALS.

The Circuit Court of Appeals dismissed both appeals, and upon the petitions to revise, held the contract invalid on account of there being no notice to the bankrupt and his family, and held that the title, to the farm and other assets, was vested in the trustee in bankruptcy, under Sec. 70e; that is, the setting aside of a fraudulent conveyance.

The Circuit Court of Appeals held that the amount of the assets that should have come into the hands of the

trustee was *only an amount sufficient to pay creditors, and that the costs of administration, and attorney's fees, must be paid by creditors, and creditors not be paid in full.*

The case was remanded, to the end that attorney's fees, and costs of administration, be fixed and paid out of the fund going to creditors, thus making a small pro rata distribution to the creditors.

SPECIFICATIONS OF ERROR.

Petitioners respectfully insist that the Circuit Court of Appeals is in error, as follows:

I.

In holding that although the trustee has the title to a large amount of unscheduled and fraudulently concealed assets belonging to the bankrupt, in excess of the amount necessary to pay creditors, that the creditors must pay the attorney's fees, and costs and expenses, and receive a small pro rata payment of their claims.

II.

In holding that "the bankrupt caused the title to a farm and personal property to be conveyed to his wife," there was no conveyance to the bankrupt's wife, but to a naked trustee, who held for the bankrupt, *as adjudicated by the Chancery Court, and such adudication is final and conclusive.*

III.

In holding that the title to assets of this estate was vested in the Trustee, by Section 70e of the Bankruptcy Act (that is, that the Trustee recovered in the right of a creditor, under Shannon's Code of Tennessee, Secs. 6097-

6099). The proceedings in the Chancery Court of Williamson County, Tennessee, under which the trustee takes title to all of the assets, is not susceptible to the construction, because:

(a) The Bill filed by the trustee in the Chancery Court of Williamson County, Tennessee, under which title was vested in him, was *not to set aside a fraudulent conveyance or any conveyance*, but to construe a deed and determine as a matter of fact, upon proof, the owner and holder of the real title, and to remove all claims of any parties under the deed, as a cloud upon the trustee's record title.

The Original Bill charges that the bankrupt was in fact the real owner, and was, and had been concealing his assets in the name of a naked trustee.

The prayer of the Bill is not to set aside a fraudulent conveyance, but that the real title to these assets be decreed to have been in the bankrupt up to bankruptcy, and in the trustee in bankruptcy after adjudication.

The decree is responsive to the prayer of the Original Bill.

The decree would be void as not responsive to the allegations and prayer of the Bill, under the construction placed upon it by the Circuit Court of Appeals; that is, that it was rendered under the Tennessee Statutes with reference to fraudulent conveyances (Shannon's Code, Secs. 6097-6099), which sections provide the right a creditor has in Tennessee, through Sec. 70e of the Bankruptcy Act.

(b) The deed to a naked trustee was executed and recorded more than fifteen (15) years before bankruptcy, and suit could not have been maintained to set it aside as a fraudlent conveyance, because the seven

years' adverse possession statutes of Tennessee would have barred the right to a creditor to proceed under Shannon's Code of Tennessee, Secs. 6097-6099.

(c) Title to the assets of this estate was vested in the Trustee in Bankruptcy, in the proceedings in the Chancery Court of Williamson County, Tennessee, because:

(1) The trust sought to be created was a dry or passive trust, and the title to the assets, under the law of Tennessee, vests in the real beneficiary, in this case, J. H. Sedberry, the bankrupt.

(2) The trust sought to be created was created by the bankrupt for his own benefit, and a party cannot create a spendthrift trust for his own benefit, and the real title is vested in him, under the law of Tennessee.

IV.

In not holding that the title to the assets of this estate was vested in the trustee in bankruptcy, under the Bankruptcy Act, Sec. 70a5.

The title to the assets in this case was vested in the trustee in bankruptcy in the proceedings in the Chancery Court of Williamson County, Tennessee, under Sec. 70a5 alone, and the decree is not susceptible to any other construction, because:

(a) The assets could by some means have been transferred by the bankrupt.

(b) The property might have been levied upon and sold under judicial process against the bankrupt.

(c) There is nothing in the Bill or decree in the Chancery Court suit under which title to these assets could possibly be vested, undr Sec. 70e.

V.

In holding the contract between petitioner Stokes and the trustee in bankruptcy invalid on account of there being no notice to the bankrupt and the members of his family.

Under the decree of the State Court, the bankrupt's family never at any time had any interest in this property. The bankrupt had no interest, and no standing in court.

VI.

In holding that the amount of petitioner Stokes' fee must be based upon the amount due creditors.

VII.

In not holding that the amount of petitioner Stokes' fee must be based upon the entire assets, title to which was vested in the trustee.

VIII.

In not allowing the expense account of petitioner Stokes in the sum of One Thousand, One Hundred and Twenty-seven and 28/100 ($1,127.28) Dollars.

IX.

In dismissing petitioners' appeal from the action of the District Judge, as appeal is the proper procedure to test the validity of the contract between petitioner Stokes and the trustee in bankruptcy.

REASONS WHY PETITION SHOULD BE GRANTED.

There is great conflict of authority between the various District Courts and the Courts of Appeal upon the questions presented, and they have not been finally determined by the Supreme Court, so far as we have been able to ascertain, and we respectfully insist that a determination of these questions is essential to a uniform construction of the Bankruptcy Act, throughout the United States, to the end that they may be finally determined:

1. The title and assets a trustee in bankruptcy takes where assets are not scheduled and are fraudulently concealed, and *there is a large surplus*, as in the instant case.

The Circuit Court of Appeals wholly misconceived the State Court proceedings under which title to these assets was vested in the trustee. Title was vested, not on account of any fraudulent conveyance, but *because the assets were unscheduled and concealed*, and, therefore, passed under Sec. 70a5 of the Bankruptcy Act, and not under Sec 70e, as erroneously held by the Circuit Court of Appeals.

2. The power and authority of a trustee in bankruptcy, with the approval of the Court, to make a contract with an attorney upon a contingent basis, in cases where there are no assets, as in the instant case, and assets are unscheduled and fraudulently concealed, and could not have been recovered otherwise than through such a contract.

3. The sum or amount that shall constitute the basis upon which attorney's fees shall be allowed; that is, whether the fees shall be determined by a definite and certain amount, namely, the assets vested in the trustee, or an uncertain and fluctuating amount, depending on the amount of claims, if any, that may be filed by creditors, and allowed by the Court.

4. The force and effect that the Bankrupt Court will give to the decrees of a State Court, in a suit filed by the trustee asserting title to property belonging to the bankrupt's estate; that is, whether the Bankrupt Court is bound by the State Court decree, or whether it can modify or emasculate such a decree, as held by the Court of Appeals.

5. The bankrupt and his family construed the State Court decree as vesting in the trustee absolute title to these assets. In their petition in these proceedings they ask that the amount due creditors be fixed, to the end that they may be paid in full, and the costs of administration, including attorney's fees, be likewise ascertained, that they may be paid, in addition.

The Court of Appeals destroyed the rights of creditors despite the fact that the bankrupt and family, in their petition, concede the creditors must be paid in full, and also despite the fact that creditors had no opportunity to be heard upon this question.

6. The Court of Appeals held that the trustee, in litigating before another forum, was bound by the expenses provided for in the Bankruptcy Act, with regard to itemization, etc. This has reference to expenses in the proceeding in bankruptcy proper, and the trustee should not be prohibited from going into other forums to secure the estate to which he has title, and for its protection, which other forums are not bound by the expenses provided for in the Act with reference to bankruptcy proceedings proper.

Wherefore, your petitioners pray:

That this Honorable Court will be pleased to grant the writ of certiorari in this case to the Circuit Court of Appeals for the Sixth Circuit, to bring up this case to this

Honorable Court for such proceedings therein as to this Honorable Court may seem just.

THOS. G. WATKINS, *Trustee;*
JORDAN STOKES, JR.,
JOS. R. WEST,
R. H. CROCKETT,

Petitioners,

By ----------

Attorneys for Petitioners.

STATE OF TENNESSEE,
COUNTY OF DAVIDSON.

I, Jordan Stokes, Jr., being duly sworn, say:

That I am one of the petitioners in the foregoing petition; that I have read said petition, and that the same is true to my own knowledge, information and belief; my knowledge is derived from the record in this case, and from what has taken place in my presence and hearing in the Court in which this action has been heard.

Subscribed and sworn to before me, this ____ day of January, 1922.

Notary Public

I hereby certify that I have examined the foregoing petition, and in my opinion the petition is well founded and the case is one in which the prayer of the petition should be granted by this Court.

Of Counsel for Petitioners.

No. 690 248

JAN 14
WM. R. STA

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921

THOS G. WATKINS, TRUSTEE,
JORDAN STOKES, JR., ET AL
PETITIONERS

vs.

J. H. SEDBERRY ET AL
RESPONDENTS.

ANSWER TO PETITION FOR CERTIORARI, BRIEF AND ARGUMENT

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BAIRD-WARD PRINTING CO., NASHVILLE, TENN.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1921

THOS G. WATKINS, TRUSTEE,
JORDAN STOKES, JR., ET AL
PETITIONERS

vs.

J. H. SEDBERRY ET AL
RESPONDENTS.

ANSWER TO PETITION FOR CERTIORARI, BRIEF AND ARGUMENT

ANSWER TO PETITION FOR CERTIORARI.

May it Please the Court:

(1)

Nature of Case.

This is a bankruptcy proceeding. It involves questions: (1) of the amount of the fee to be paid the attorney of the trustee; (2) out of what "fund" this fee is payable; also (3) whether the contract between the trustee and his attorney was not champertous.

The debts of the bankrupt were $17,500.00, increased by

later interest accumulations, as of the date of decision, to some $21,000.00. (Rec., pp. 194, 203.)

The attorney for the trustee is claiming a fee of $49,000.00. (Rec., p. 79.)

As the suit arose out of a "proceeding" in bankruptcy, as distinguished from a "controversy" in bankruptcy, the case went from the district court to the Court of Appeals on a petition to revise, the district judge making a written finding of facts, set out in the record. (Rec., pp. 192, 219.)

(2)

Decree of Referee.

The referee heard proof and allowed the attorney a fee of $10,000.00 and expenses of $750.00, on his claim of $49,000.00 for a fee and about $1,150.00 for expenses. The referee further held this fee and expenses was payable out of the "surplus" left above the amount necessary to pay all the bankrupt's debts in full with interest. (Rec., p. 194.)

(3)

Decree of District Court.

On petition to review the district judge cut the fee allowance to $7,500.00, but otherwise affirmed the referee. (Rec., p. 207.)

(4)

Decree of Court of Appeals.

The Court of Appeals for the Sixth Circuit unanimously reversed the district court:

(a) Holding no attorneys' fee and expenses could be taken out of the "surplus," but said fee was to be paid out of the $21,000.00 decreed the bankrupt's creditors, as the alleged fraudulent conveyance or device used by the bank-

Since writing this brief the opinion of the Court of Appeals has been reported in 275 Fed. 894.

rupt to defraud, hinder or delay his creditors was a trust conveyance, or deed, made in 1902, recorded in 1904, whereas the bankruptcy proceeding was not begun until 1917; that, with respect to the chancery proceeding in the state court to set aside or uncover this fraudulent conveyance or device, made years before bankruptcy, the Tennessee statutes prescribed and defined and limited the *extent* of the recovery of the trustee and expressly limited same to the recovery of the debts with interest—no attorney's fees or expense money. That the attorney must get his fee out of his own client's recovery.

(b) Further, that the fee allowed of $7,500,00, on the facts found, was excessive.

From this decree of the Court of Appeals the attorney and trustee have filed in this Court a petition for a writ of certiorari and assigned errors.

While the bankrupt and members of his family, beneficiaries under the trust deed of 1902, were entirely satisfied with the *result* of the decree of the Court of Appeals and file here no petition for certiorari, yet they will, if the case should be here reviewed, call this Court's attention to the *champertous* nature of the written contract between the attorney and the trustee (Rec., p. 14), under which the services in the state court were rendered and which contract was and is sought to be herein *specifically* enforced (Rec., pp. 116, 186). This because the federal courts hold that champerty will be taken notice of by them of their own motion, without being raised, pleaded, or assigned as error, whenever the same appears of record. (167 U. S., 624; 232 Fed., 95.)

Champerty was, however, pleaded and raised by the bankrupt and members of his family, beneficiaries under the deed of 1902, in all the lower courts, but held unnecessary to be passed upon because such courts held the contract be-

tween the attorney and the trustee invalid on other grounds. (Rec., p. 199; Op. Court of Appeals, p. 2.)

It can be seen from what has been stated that these respondents are not interested in the amount of the attorney's fee and expenses, if the decree of the Court of Appeals is affirmed, as that court held such fee was not payable by respondents or out of the "surplus" to be returned them.

The question from what "fund" this attorney's fee is payable is, however, of concern to them and they insist that the decree of the Court of Appeals, holding it not payable out of the surplus, is correct.

(5)

No Reasons for Granting Writ of Certiorari Herein.

An effort is made in the petition and opposing brief to set forth some grounds to induce this Court to grant the writ of certiorari—to make it a case of gravity and importance.

On pages 31-32, 113-114, of the petition these alleged reasons are set out:

Substantially they are that it is "essential" for this Court to review this decree of the Court of Appeals in order to secure "a uniform construction of the Bankruptcy Act." Yet on page 113 it is suggested that this is a novel case of the first impression.

Of course, if the last suggestion is true, there has yet arisen no lack of uniformity. A single instance creates and can create no lack of uniformity. It is not claimed there is any diversity of decisions in the various circuits. Only this one case so far has arisen. It is rather to be supposed that the same question in other circuits, on like facts, will be decided the same way, when they do arise. Most of the bankruptcy law, enunciated by court decisions, was never brought before this Court.

Again it is said there is "no provision in the Bankruptcy Act under which the surplus is payable to any particular person" (Brief, p. 113), and this question ought to be decided.

Counsel evidently have overlooked Sec. 66 of the Bankruptcy Act, where it is provided after the lapse of a year and payment of claims of creditors, that the "balance shall be paid to the bankrupt." So both the act and the case of *Johnson* v. *Norris*, 190 Fed., 459, cited by our adversaries, would seem to indicate pretty clearly where the surplus was to go and so remove the necessity of securing its determination here as a novel question. The surplus goes back to the bankrupt or his grantee.

Lastly, as they contend the Court of Appeals merely failed to apply the Bankruptcy Act correctly to the *local* law of Tennessee (Brief, p. 47), it is not seen how such a decision could be of much *general* interest in any event.

(6)

Brief Statement of the Case.

The case left the district court on a petition to revise and that court filed a written opinion setting forth the facts and the facts therein set forth are made the findings of facts "together with the pleadings" by order of the district court (Rec., pp. 192, 219):

In 1902, one W. J. Zellner and wife made a deed to Mrs. Z. C. Sedberry, trustee, to a farm of 337 acres in Williamson County, Tennessee. The consideration was $18,000.00, of which $5,000.00 was paid in cash and notes given for remainder, due 1, 2, 3, 4 years. (Rec., pp. 31, 193.)

The deed recited:

> "To have and to hold said above described tract of land to the said Mrs. Z. C. Sedberry, trustee, upon the uses, *trusts* and conditions hereinafter set out. . . .

"Said Mrs. Z. C. Sedberry, trustee, will hold said tract of land for the use and benefit of *herself* and husband, J. H. Sedberry, and the children of said Z. C. Sedberry by her present husband, J. H. Sedberry, such as may hereafter be born to said couple, as well as those now living. Said Z. C. Sedberry, trustee, *is further authorized and empowered to sell and convey said land* for the purpose of *reinvestment*, but in the case of such sale, the proceeds shall be reinvested in other lands to be held subject to the *same* conditions and limitations herein set out, except such of said proceeds as may be applied to the payment of the purchase money for the tract of land herein conveyed.

"It is further provided in order to perfect any sale of said land, or any *portion* of same by the said trustee, it shall be necessary for her husband, J. H. Sedberry, to join her in the execution of the deed conveying said tract of land, or any *part* of same, sold under the provisions of this deed and for the considerations herein above set out. . . ."

(Rec., pp. 31-32, 193.)

The deed was publicly recorded in 1904. (Rec., p. 33.)

No creditor's claim scheduled in the subsequent bankruptcy of J. H. Sedberry in 1917, came into existence until 1912. (Rec., p. 42.)

Mrs. Sedberry at the time this deed was made her by Zellner was about 34 years of age and had three children, the respondents, W. H. Sedberry, J. B. Sedberry, and Katherine Sedberry (now Overall). All still survive. (Rec., p. 25.) No children were born to the grantee and her husband since. (Rec., p. 25.) The family lived on the farm from 1902 to 1917 and the farm increased largely in value—being worth with its improvements, etc., at time of Sedberry's bankruptcy later (at least in 1920) some $97,943.01. (Rec., pp. 180, 194.) Great depreciation in the value of farm lands has since occurred.

With the passage of years Sedberry got in debt, owing some $17,500.00 in 1917. (Rec., p. 194.)

The district judge found that certain of his creditors began suit against him in chancery at Franklin "to set aside the conveyance (*i. e.*, of the farm) as fraudulent—which appears inferentially to have been the cause which precipitated the filing of the petition in bankruptcy." (Rec., p. 203.) This first suit was by a man named Timmons and was brought in April, 1917. (Rec., pp. 139-140.) Stokes had talked with Timmons and read this bill before being employed later by the trustee in bankruptcy of Sedberry. (Rec., p. 183.)

Sedberry was forced to file a petition in bankruptcy in August, 1917, with some $17,500.00 of debts and practically no assets scheduled. (Rec., p. 192.)

He did not schedule any interest in this farm as his, because advised by his counsel (Judge J. C. Eggleston of Franklin) that he had none. As the Referee found:

> "The bankrupt made the transfer to his wife many years before any of the present scheduled debts were contracted and the bankrupt was informed by honest and eminent counsel that his interest in the farm and its proceeds was not one required to be scheduled by him at the time he filed his voluntary petition in bankruptcy." (Rec., p. 183.)

So there was no intentional fraud in not scheduling.

One Thos. G. Watkins was elected trustee in bankruptcy of Sedberry on September 10, 1917. (Rec., p. 10.) Sedberry having been adjudicated a bankrupt on August 24, 1917. (Rec., p. 9.)

Shortly thereafter, as the district judge found, "the trustee in bankruptcy, without notice to the creditors, em-

ployed counsel (Stokes) to institute suits to recover property of the bankrupt, upon a contingent basis, under a contract providing *that such counsel* should *bear the necessary expenses of the* litigation and *guarantee the trustee* against all damages and *expenses* growing out of the employment, etc." (Rec., p. 192.) The contract was submitted to the referee and approved. (Rec., pp. 13, 192.) Under the contract the attorney was to get 50 per cent "of any property, funds or assets that may be recovered." (Rec., p. 14.)

On the same day this contract was secured counsel filed a bill in chancery at Franklin, Tenn., on behalf of the trustee in bankruptcy, against the bankrupt Sedberry and the members of the family for the purpose of, as the district judge found, *"setting aside as fraudulent a conveyance of* a tract of land made in 1902 to the bankrupt's wife in trust for the bankrupt, his wife and their children, and to recover said land and all the personal property and crops thereon as the property of the bankrupt." (Rec., p. 193.)

It is now argued that the district judge and the Court of Appeals both "wholly misconceived the issue (*i. e.*, in the chancery case), and their construction of the decree is erroneous." (Rec., p. 104.) It is said that the trustee's suit at Franklin contained no prayer "to set aside this deed for any reason." The relief prayed for on this point is as follows:

> "7th. That your complainant be declared to be the owner of the farm set out . . . in the bill . . . and the same be sold . . . and proceeds applied in payment of the costs and expenses of these proceedings, the amount due Mrs. Mary Glass, executrix (who held a mortgage) and the balance to be paid to your complainant." (Brief, opposing counsel, p. 18.)

The district judge understood the Franklin suit to be a suit to set aside a fraudulent conveyance and so found. (Rec., p. 193.) So did the Court of Appeals.

Examine, for a moment, some of the allegations of this Franklin bill:

1. "Your complainant would further show the Court: That the said J. H. Sedberry procured *said conveyance to be made to defendant*, Z. C. Sedberry, his wife, as trustee for the purpose of *defrauding* his existing and subsequent creditors." (Rec., p. 18.)

2. That he did so "for the purpose of hindering, delaying and defrauding" his creditors. (Rec., p. 21.)

3. "That said deed from W. J. Zellner was so written and taken by direction and procurement of J. H. Sedberry for the purpose of hindering, delaying and defrauding the existing and subsequent creditors of defendant, J. H. Sedberry, and that the purposes that caused defendant, J. H. Sedberry, to have said deed drawn in the manner and form it was are shown to have been fraudulent and for the purposes of hindering, delaying and defrauding his existing and subsequent creditors." (Rec., p. 25.)

4. The deed that *is* attacked is expressly set out and exhibited with the bill. (Rec., p. 27.)

What is the difference, in view of these allegations in the bill, in asking in the prayer:

That the deed be set aside and complainant be declared the owner of the farm, and in asking

That complainant be declared the owner of the farm?

The deed *had* to be set aside *before* such a declaration could be made. Mr. Stokes' own evidence at middle page 130 of record shows this. He speaks there of the cases on which "he relied to *set aside* the conveyance."

This bill was framed under and followed the very lan-

guage of Sec. 6097 of Shannon's Code of Tennessee, as the Court of Appeals held, said section reading as follows:

> "Creditors' bill to set aside a fraudulent conveyance. Any creditor, without first having obtained a judgment at law, may file his bill in chancery for himself, or for himself and other creditors, to set aside *fraudulent conveyances* of property, *or* other *devices* resorted to for the purpose of *hindering and delaying* creditors, and subject the property by sale or otherwise to the satisfaction of the *debt.*"

It will be observed that the very language of the statute is followed four different times in the bill. It is sought to sell the property and turn over the proceeds to the trustee. What for? Obviously to pay "the debts" of the bankrupt, for that was as far as the trustee (representing creditors) could take or disturb the conveyance or device (immaterial what it is called) under the express limitations of the Tennessee law.

It will be also observed the Court of Appeals construed the suit at Franklin to have been prosecuted under Sec. 6097 of Shannon's Code of Tennessee. Mr. Stokes *now* says that court "misconceived" the nature of his Franklin suit. Yet in his own evidence below, when called to declare, under what authority he had brought his suit, he said:

> "The Tennessee cases on which I relied *to set aside the conveyance* made in 1902 to Mrs. Sedberry were *Bank* v. *Watkins*, reported, I think, in 14 Cates. . . ." (Rec., p. 130.)

This case is reported in 126 Tenn. (18 Cates), at p. 453.

It was a suit in chancery assailing a conveyance by one Watkins to his brother, as trustee, for the donor himself, as fraudulent and as hindering and delaying creditors. The Supreme Court of Tennessee expressly held it *to be* a suit to set aside a fraudulent conveyance, or device, to hinder or

delay creditors and also that it was brought under Sec. 6097 of Shannon's Code. (126 Tenn. at pp. 457, 458.)

This being true, can Mr. Stokes be correct in saying the Court of Appeals "misconceived" his bill in holding it *was* framed under Sec. 6097 of Shannon's Code?

As between the grantor and grantee a fraudulent conveyance or device is good, and prior to four months of bankruptcy, can only be set aside by creditors (or a trustee in bankruptcy representing creditors) to the extent necessary to discharge the bankrupt's debts, with interest, under all Tennessee statute and common law.

To this bill in chancery at Franklin the bankrupt and members of his family, beneficiaries under the trust deed of 1902, filed answers denying the fraud alleged and the other allegations of the bill. (Rec., pp. 41, 41, 51.)

In none of these answers was there any plea of the statute of limitations.

Proof was taken by both sides. In July, 1918, the case was tried before Chancellor Hobbs. "The actual hearing," as the district judge found, "occupied only two days."

A week later the chancellor decided the case, handing down no written opinion, but merely saying he thought Sedberry's debts ought to be paid. Only two counsel were present in court when the decision was announced: Judge Eggleston, representing the Sedberrys, and a Mr. Crockett, of the Franklin Bar, associated with Mr. Stokes, representing the trustee. There is no dispute between them as to what the chancellor said. As Judge Eggleston put it:

> "The Chancellor did not determine anything scarcely in his announcement, but just simply said, 'I think these debts ought to be paid; I don't think these people ought to lose their money,' and he probably said a few words,

I don't recall, and stopped. He also added that his conclusion, as announced, was not in accord with the opinion he would have delivered when he first took the case under advisement." (Rec., p. 142.)

Mr. Crockett agrees entirely with Judge Eggleston on this. He testified: "He (the chancellor) said in substance what Judge Eggleston has testified to." (Rec., p. 168.)

Thereupon Mr. Stokes *in Nashville* undertook to draw a decree. He took occasion to draft a very lengthy and detailed decree and went out to Franklin with it to present to opposing counsel. All counsel met to go over his draft.

There was no line or clause in Stokes' first draft of a decree about no appeal being taken. He admits as much. (Rec., p. 167.) When counsel met considerable differences arose over the draft of the decree.

The Sedberrys were very much dissatisfied therewith and would have appealed; but, in the course of the discussion it was suggested that the Sedberrys were anxious to be restored to the possesion of their farm (it had been in the receiver's hands for a long time and valuable crops were and could be produced thereon), and for this reason, and in order to save further time and expenses of litigation, they might be willing to forego their appeal and join with the trustee in a mortgage on the farm and out of the proceeds pay off the bankrupt's debts. Sedberry's attorneys retired to talk this matter of this compromise over with him. It became important to secure an idea of what the costs and attorney's fees claimed would be. The debts were known. Effort was made to get Mr. Stokes to name a fee, which in the compromise would be paid him, and would be included in the compromise settlement. Mr. Stokes said "this was an exclusive matter for the court of bankruptcy to pass on, that he would not agree on this and would leave that question for the court of bankruptcy. No mention

was made of any contract he had with the trustee, nor did we (Messrs, Eggleston and Handley, the bankrupt's attorneys), nor the bankrupt know that any such existed." (Rec., p. 147.) Mr. Stokes admitted as much. On cross-examination he said: "I did not tell the attorneys on the other side at any of our conferences at Franklin about my fee contract or that I was going to claim 50 per cent of the Sedberry estate. I wasn't asked the question." (Rec., p. 167.)

Mr. Crockett, Mr. Stokes' associate counsel, himself admits he knew nothing of Stokes' contract and claim at the time the decree was entered or for months afterwards. (Rec., p. 131.)

Thinking the general compromise settlement was understood and that everything would be and was concluded except the attorney's fee, and that, by consent, would be fixed by the court of bankruptcy, the Sedberrys did not appeal. As illustrating the compromise, Stokes returned to Nashville and inserted a new clause in the decree, binding everyone not to appeal. He admits no such clause was in the first draft of a decree: "The first draft of the decree I carried out to Franklin did not have anything in it about the Sedberrys not appealing." (Rec., p. 167.)

Understanding everything was thereby being compromised and settled, the attorneys for the Sedberrys paid little attention to the draft of the new decree made by Stokes and signed it and the same was entered. The chancellor never saw it. As Judge Eggleston said:

> "After we had the understanding that we did subsequently with Mr. Stokes, we were perfectly willing for the decree to go down, just in the *form* Mr. Stokes had written it, because we thought the whole matter would be settled and the debts would all be paid, and it was a matter of indifference to us what the decree pro-

vided, as we expected to pay it all off anyway. The chancellor never saw the decree." (Rec., p. 143.)

Several months after the decree had been so signed and entered Sedberry's attorneys met in Nashville with Mr. Stokes to wind the matter up, and were surprised to learn then for the first time of Mr. Stokes' contract and his claim for a $49,000.00 fee. (Rec., p. 141.)

Thereupon the Sedberrys filed a petition before the Referee, settling up the compromise agreement, under which the decree at Franklin had been entered and the agreement not to appeal made; Stokes' breach of same; and his claim of a fee of $49,000.00, and praying the Referee to fix his fee "in order to carry out the terms of the agreement heretofore recited." (Rec., p. 72.)

To this petition Stokes and his associates and the trustee filed answers and cross-petitions, denying the compromise, *setting up their contract* and praying "the Court to carry out the terms of said contract" and pay them a $49,000.00 fee and $1,127.28 expense money. (Rec., p. 116.)

To this the Sedberrys plead the champerty of the contract between the trustee and his attorney, dated October 24, 1917; its violation of the Bankruptcy Act (Sec. 62), and, inasmuch as said Stokes now repudiated the compromise agreement, they declined to pay him any fee and denied liability therefor and stood on the law. (Rec., p. 118.)

The district judge found:

"The defendants having no notice of the contract between the trustee and his counsel and *understanding* that this decree would be satisfied upon the payment of the claims of creditors and the costs and expenses of the bankruptcy cause, including reasonable compensation to the counsel for the trustee, did not appeal from the decree. However, no definite contract was made with the trustee or his counsel to this effect, and while

much proof was taken in reference to the matter of such an agreement, it is not now relied on by any of the parties or at all material except in so far as the understanding of the defendants in reference to this matter may throw light upon their failure to appeal and the termination of the litigation in the chancery court." (Rec., p. 193.)

The district court is correct in saying that the compromise settlement at Franklin was not relied upon by any of the parties on the hearing before it, but it *was being* relied on by the Sedberrys when, on December 18, 1918 (Rec., p. 68), they filed in good faith their petition in the bankruptcy case before the Referee, setting up the compromise settlement at Franklin, stating that thereafter, much to their surprise, Mr. Stokes had advised them of his contract with the trustee and demanded as his "contract" fee the sum of $49,000.00, "a sum so exorbitant, in view of the services rendered, as to be out of the question, and it, therefore, has been necessary to appeal to this court to fix said fee *in order to carry out the terms of the agreement heretofore recited.*" (Rec., p. 72.)

It will be noted that this offer to pay a "reasonable" fee at that time was made *merely* in pursuance of what was understood to be a compromise agreement. Instead of admitting the agreement and joining in the prayer of this petition, Mr. Stokes and his associates, as heretofore recited, filed an answer and cross-petition, denied therein the making of any compromise agreement, set up and filed as an exhibit thereto the contract of October 24, 1917, and asked the court (referee) "to carry out the terms of said contract." (Rec., p. 116.)

Thereupon, as recited, the Sedberrys filed an answer pleading the champerty in the contract, its violation of Sec. 62 of the Bankruptcy Act, and denied liability for any attorney's fee. (Rec., pp. 117-121.)

The Court of Appeals understood this matter, for they held in their opinion thus:

> "It is said that in this case payment of the counsel fee should be made out of the surplus, because there was an understanding to that effect between Mr. Stokes and the Sedberrys and because the present controversy was initiated by the filing of a petition in the bankruptcy court by the Sedberrys, which petition was upon that theory. As to the second point it should be observed that the district judge expressly permitted the Sedberrys, upon the argument, to change their position and to claim that the fee should be paid by the creditors; this would fully justify an amendment of the Sedberrys' petition *nunc pro tunc*, if that were necessary. As to the first point *it appears* that though there *was* an understanding to this effect, yet it was *reached as a part of a general compromise agreement* then entered into, in connection with which the Sedberrys understood that Mr. Stokes would ask the allowance of only reasonable compensation, while in fact Mr. Stokes then intended to insist upon the fifty per cent contract, but did not disclose to the Sedberrys its existence. The Sedberrys ought not to be bound by their part of the proposed compromise." (Op. Court of Appeals, pp. 6-7.)

This was how the decree at Franklin, agreeing not to appeal, was made and entered.

Passing now to other matters in the petition for certiorari, attacking the decree of the Court of Appeals:

BRIEF.

A.

The Trust an Active One.

The trust deed of January 1, 1902, from Zellner to Mrs. Sedberry, trustee created an active trust and not a dry or passive trust. (Rec., p. 31.)

1. It expressly vests the trustee with authority and power to sell and convey the property, all or part, and to reinvest the proceeds in other property under like trusts. (Rec., p. 32.) Power to sell and reinvest makes an active trust. The conveyance of a beneficial interest to the trustee likewise makes an active trust.

39 Cyc., 213;
Henson v. *Wright*, 88 Tenn., 504.

2. It impliedly vests power and discretion as to management, control, receipt of income, payment of taxes and expenses, and division of net income, among the beneficiaries, in the trustee and charges her with the performance of such duties.

39 Cyc., 213;
Henson v. *Wright*, 88 Tenn., 504.

The trust, therefore, both expressly and by implication, was an active one.

B.

Statute of Limitations.

The statute of limitations does not run in Tennessee against creditors of a fraudulent grantor from the execution and recording of the fraudulent deed, but from the accrual of the creditors' right of action—which is the time their debts mature.

Shannon's (new) Code, Tenn., Sec. 6102 and notes.
Jones v. *Read*, 1 Hum., 335;
Ramsey v. *Quillen*, 5 Lea, 184.

Furthermore, no statute of limitations was pleaded to the Franklin suit. (Rec., pp. 41, 46.)

C.

Property Not Transferable by Bankrupt.

J. H. Sedberry could not have transferred, prior to bankruptcy, this property. The title was not and never had been in him and the conveyance, if fraudulent, was nevertheless good as against him.

Nichol v. *Nichol*, 4 Bax. (Tenn.), 145;
Hopkins v. *Bryant*, 85 Tenn., 520;
Battle v. *Street*, 85 Tenn., 282;
20 Cyc., 608.

D.

Nor Could It Have Been Levied on At Law.

Neither could it, prior to bankruptcy, have been by Sedberry's creditors "levied upon and sold under judicial process against him" (Bank. Act, Sec. 70a (5).

1. If it was held under a resulting trust, it could not have been levied upon and sold under an execution at law against him.

Smith v. *Henson*, 51 Tenn., 250.

2. If it was held under an express trust (as it *was*), it was equally not subject to levy and sale under execution at law, but could only be reached by appropriate proceedings in equity, as was done by the bill in chancery at Franklin.

Killdrew v. *Elliott*, 8 Hum., 515;
Ross v. *Young*, 5 Sneed, 67;
William v. *Whoples*, 1 Head, 401;
Fain v. *Jones*, 3 Head, 308;
Withers v. *Pemberton*, 3 Cold., 64;
Bank v. *Pettet*, 9 Heisk., 447;
Pennebaker v. *Tomlison*, 1 Tenn. Ch., 116;
Northman v. *Ins. Co.*, 1 Tenn. Ch., 323;
McReady v. *Haslock*, 3 Tenn. Ch., 17;
Hurst v. *Jones*, 10 Lea, 8;
Bank v. *Watkins*, 126 Tenn., 453.

E.

Decree at Franklin one sub modo.

The decree at Franklin, irrespective of its terms, was but a decree *sub modo*, to be read in the light of the purposes of the suit and the law of Tennessee.

Graham v. *Railroad Co.*, 70 U. S., 704;
Barnes v. *Railroad Co.*, 122 U. S., 1;
McDowell v. *McMurria* (Ga.), 73 Am. St. R., 156-157;
Davis v. *Gates* (C. C. A.), 235 Fed., 192;
Huff v. *Bidwell* (C. C. A.), 195 Fed., 430.

F.

Amount sufficient to pay debts, extent of recovery.

Under Tennessee law, a conveyance or device in fraud of creditors, made, executed and recorded more than four months prior to bankruptcy, could only be disturbed to the extent necessary to pay the debts of creditors with interest. No attorney's fee for complainant could be taken out of surplus. The "fund" legally transmissible to the bankruptcy court was only an amount sufficient to pay debts with interest.

Tenn. Code, 4288, 4290 (Shannon's Code, Secs. 6097, 6099);
Bank v. *Heller*, 101 Tenn., 73;
Gibson Suit in Ch. (2 Ed.), Sec. 1015; 12 R. C. L., 155;
Douglas v. *Bank*, 13 Pickle (Tenn.), 148;
Huff v. *Bidwell* (C. C. A.), 195 Fed., 430;
20 Cyc., 825;
Bankruptcy Act, Secs. 67(e), 70a (4), 70e;
Page v. *Rogers* (C. C. A.), 140 Fed., 596;
Page v. *Rogers* (C. C. A.), 149 Fed., 194;
Page v. *Rogers*, 211 U. S., 580;
Bush v. *Storage Co.* (Tenn.), 136 Fed., 918;
Shoe Co. v. *Selden* (C. C. A.), 122 Fed., 593;
Trust Co. v. *Duncan* (C. C. A.), 254 Fed., 780;
Duncan v. *Gates* (C. C. A.), 235 Fed., 192;
20 Cyc., 819;

In Re: Mueller, 101 Fed., 413;
Davis v. *Wiley*, 45 Am. Bank. R., 348;
Remington on Bankruptcy, Sec. 2070.

G.

Contract champertous. Nothing recoverable.

The contract of October 24, 1917, between the attorney and trustee, was champertous, and, as it is sought to be herein specifically enforced, no recovery at all can be had.

Contract Oct. 24, 1917. (Rec., p. 14);
Answer and Cross-Petition to Review before District Judge (Rec., p. 186) asking its specific enforcement.
Peck v. *Heurich*, 167 U. S., 624;
General Film Co. v. *Sampliner* (C. C. A.), 232 Fed., 95;
Casserleigh v. *Woods* (C. C. A.), 119 Fed., 308;
Jones v. *Pettingill* (C. C. A.), 245 Fed., 269; certiorari denied 245 U. S., 663;
Sun Ins. Co. v. *Cassanova* (C. C. A.), 260 Fed., 449;
Hayne v. *Coyne*, 10 Heisk. (Tenn.), 39;
Keaton v. *Dennis*, 103 Tenn., 160;
Staub v. *Coal Co.*, 140 Tenn., 505;
Roller v. *Murray*, 112 Va., 780; S. C., 38 L. R. A. (N. S.), 1202 and note;
Moreland v. *DeVeney*, 72 Kan., 481; S. C., 83 Am. Dec., 1097;
Butler v. *Legro*, 62 N. H., 350; S. C., 13 Am. St. R., 573;
Mazurian v. *Mogan*, 25 La. Ann., 281;
Bargrover v. *Pettegrew*, 128 Iowa, 533; S. C., 2 L. R. A. (N. S.), 260;
Johnston v. *Railroad*, L. R. A. (N. S.), 1917-B, at page 1143;
Stark County v. *Michel*, 6 Am. Law Rep., 181;
Taylor v. *Perkins*, 171 Mo. App., 246; S. C., 157 S. W., 122;
Hudson v. *Shrafe* (S. D.), 171, N. W., 320;
Gammons v. *Gulbranson* (Minn.), 80 N. W., 778.

H.

Contract violated Bankruptcy Act.

This contract also violated the Bankruptcy Act which requires that the "actual and necessary expenses incurred by officers in the administration of the estate shall . . . be reported in detail under oath, and examined and approved or disapproved by the court. If approved, they shall be paid and allowed out of the estates in which they were incurred."

Bankruptcy Act, Sec. 62.

ARGUMENT.

Why any chancery suit at Franklin?

If we are not mistaken, the present argument of counsel for the trustee proves too much.

If, as they now say, (1) this farm could have been sold and transferred by Sedberry, or (2) levied on directly at law for his debts, why was it necessary for the trustee to employ counsel, agree to pay them 50 per cent of the recovery and embark on a long and expensive chancery suit to "uncover" or "recover" this property?

Why, if it was lying open, did not the trustee simply enter a summary motion before the referee for a rule on the bankrupt to deliver up and turn in the property? Such was the course to have been pursued in the interest of economy, if Sedberry could have transferred it. Or why did the trustee not take a simple judgment at law and levy on the land? If it was all so simple, as is *now* claimed, why employ counsel on a 50 per cent basis and embark on a long and expensive litigation, which was wholly unnecessary? Why seek to onerate the bankrupt with a great fee for the trustee's attorney, for the rendition of services which could have been dispensed with so easily?

The Supreme Court of Tennessee has held that where a trust deed provided, in the event of non-payment of the loan, for advertisement and sale by the trustee, no necessity existed for resorting to a court of chancery for a foreclosure and no attorney's fee could be recovered for such services from the mortgagor, even when his note provided for attorney's fee. That the foreclosure service in chancery in such case was unnecessary and uncalled for.

Clark v. *Jones*, 93 Tenn., 639.

A fee for the trustee's attorney under the language of

Sec. 62 of the Bankruptcy Act must be "necessary," *even in cases where payable out of the estate.* If it was not necessary, if Sedberry's property was just lying out in the open, subject to transfer by him or seizure for his debts, as now claimed, why Mr. Stokes and why this fee?

Why did the trustee and Mr. Stokes launch this chancery case? Why did they not just put forth their hands and seize the property or obtain a rule on Sedberry from the referee ordering him to turn it over? Their present argument, we submit, were it sound, proves too much.

They did not do, as they now claim they *could* have done, because counsel and the trustee knew it *was necessary* to file a bill to set this conveyance aside, as in fraud of creditors, show who paid the consideration, etc., and, in the right of creditors, retake so much as was necessary to discharge the bankrupt's debts and to the extent permissible under the laws of Tennessee. And that was what they proceeded to do and did.

Mr. Stokes' own testimony shows he knew that Sedberry could not be made to deed this property to the trustee; that it lay beyond Sedberry's power to do so; also that it could not be seized at law for his debts; that it was necessary to go into chancery and *set aside* the conveyance by equitable proceedings. Witness this from his evidence:

> "The fraudulent purposes as disclosed by the proof in the chancery court case of *Watkins, Trustee,* v. *Sedberry et al.* were *not* disclosed *in* that deed. The deed in my opinion was subject to attack alone upon the ground that it was an attempt on the part of J. H. Sedberry to create a spendthrift trust for his own benefit and, *of course,* I had to couple that up *by showing* that he secured or paid the consideration for the farm to the Zellners and procured the deed to be made from the Zellners to his wife as trustee." (Rec., p. 157.)

His own counsel, just a moment later, asked him if he recognized the burden of proof was on him "in order to have this deed *set aside* on the ground of fraud." (Rec., p. 157.) Mr. Stokes also spoke of the cases he "relied on to *set aside* the conveyance." (Rec., p. 130.)

The property was not transferable by Sedberry.

From what has been said in the statement of facts and from a reading of the deed to this farm, set out in full in the record at pages 31-33, it will be seen that the deed on its face purported to be a deed from W. J. Zellner and wife, for a consideration of $18,000.00, to Mrs. Z. C. Sedberry, trustee, for use and benefit of herself, her husband, three children and these thereafter born, with full power and authority in her to sell, in whole or in part, and reinvest proceeds in other lands under like trusts.

How could this property have been transferred by Sedberry and a deed made by him, so long as this conveyance stood of record? It did not appear from the face of the deed that he had paid a dollar of the purchase money. The title was never in him—first in Zellner and then in Mrs. Sedberry, as trustee. He was only one of five beneficiaries named in this active trust. His beneficial interest was not only indivisible but subject to be changed by subsequent increase in the number of his children. The title was in the trustee, under an active trust, and the beneficial interest in a number of others. There was no merger.

Even had the convyance been one directly from Sedberry, as the holder of the legal title, to defraud his creditors, to his wife, as trustee, under a deed with similar provisions to the one in question, *he* could not thereafter have "transferred" the property or avoided his conveyance. Between him and his fraudulent grantee it was good. Such is the law in Tennessee.

In *Nichol* v. *Nichol*, 63 Tenn., 145, it was held that a vendor cannot, for the purpose of conveying to his vendee a good title, avoid a deed which he himself has previously executed, the existence of which casts a doubt upon the validity of the title sought to be communicated to the vendee, by charging it was fraudulent, made for the purpose of hindering and delaying creditors (4 head note). There one P. L. Nichol, for love and affection, had conveyed certain land to his wife, in trust, for her sole and separate use, during the joint lives of the grantee and grantor, but if the grantor survived the grantee, to be revested in him, otherwise to the grantee for life, remainder to their children.

In *Battle* v. *Street*, 85 Tenn., 282, it was decided that a fraudulent grantor's heirs are bound by his deed and cannot maintain a bill against the fraudulent grantee to set it aside. They are repelled by their ancestor's fraud. The court said:

> "The conveyance would be valid as between the fraudulent grantor and his grantee, and equally binding upon his heirs and representatives. Before the act of 1852 carried into the code at Sec. 3241 such a deed could not be impeached by the administrator of the fraudulent intestate under any circumstances. That act only permits recovery of property so conveyed in case of insolvency and then *solely for the benefit of creditors*. . . . In bringing such a suit he (the administrator) is not acting in the proper capacity of representative of the estate, but rather in the new and different capacity of *representative of the creditors*. *Baxter* v. *McKay*, 4 Sneed, 288. A creditor, either with or without judgment, may likewise file such a bill, for the conveyance is, of course, fraudulent and void as to him. *Spencer* v. *Armstrong*, 12 Heisk., 707; *Armstrong* v. *Craft*, 3 Lea, 191."

The above case is illuminating on two points: First, that the property passing under the conveyance could not have been afterwards transferred by Sedberry; and second, that it could thereafter not be assailed in his right but only

in the right of and for the benefit of his creditors. Sec. 6097 of Shannon's Code of Tennessee is the section under which the Court of Appeals properly held the trustee attacked this conveyance by his bill in chancery at Franklin in the right of the latter's creditors. As shown, if he had attacked in the right of the fraudulent grantor (the bankrupt), as the conveyance antedated four months of the bankruptcy, the suit would surely have been fruitless. Sedberry could not have transferred this property or attacked his conveyance, and neither could it have been attacked by anyone else derivatively through him, but only in right of his creditors.

Neither could this property under this Zellner deed have been levied on at law for Sedberry's debts.

From what has been stated this was an active trust, with power of sale and reinvestment in the trustee, the legal title in the trustee and the beneficial use in a number of persons (including Sedberry).

This Zellner deed created no resulting trust. It created by contract (deed) a very positive, express, direct, active trust. It named the trustee, the beneficiaries, the land, the uses and trusts on which it was held, and vested the trustee with discretion and power to sell and reinvest.

A resulting trust arises by implication or presumption of law as to the grantor's intention of who should be the beneficial owner. Here it was expressly contracted and set forth: that five persons and, perhaps, others should be the beneficial owners. You cannot have a resulting trust where the grantor has directly and positively in writing designated that the grantee or others, shall likewise have the beneficial interest.

Carter v. *Montgomery*, 2 Tenn. Ch., 221.

Even if this Zellner deed *had* created a resulting trust, it

by no means follows, under the Tennessee decisions, that it could have been levied on and seized at law. True, in opposing brief, at page 46, three decisions of the Supreme Court of Tennessee are cited as so holding (*Russell* v. *Stinson,* 3 Haywood, 1; *Smithall* v. *Gray,* 1 Hum., 496; *Butler* v. *Rutledge,* 42 Tenn., 121).

In the *later* case, however, of *Smith* v. *Henson,* 4 Heisk., 250, the court expressly held that where the purchaser of land pays the consideration and procures the deed to be made to another in fraud of his creditors, the same *cannot* be levied on and sold under execution at law as the land of such purchaser, but could be reached by bill in chancery only. The reason for this change in position by the Tennessee court is pointed out in a note in 67 L. R. A., p. 887.

To conclude our contention on this phase of the case is:

1. That this was not a resulting trust, but an express trust, which could only be reached by appropriate proceedings in equity (8 Hum., 515; 10 Lea, 8; 3 Tenn. Ch., 17).

2. That if it had been a resulting trust, it still could not have been levied on at law. (4 Heisk., 250.)

Neither did the Zellner deed create a dry or passive trust.

By reference to the deed set out at pages 31-32 it will be seen that the trustee had by *implication* certain duties to perform and by *express* language was vested with certain power and discretion.

1. By implication the trustee was to manage and operate the farm, pay taxes and operating expenses, and divide and pay over the net revenue among the named beneficiaries.

2. By express words the trustee was authorized and empowered to sell the land, in whole or in part, and reinvest proceeds in other lands under like trusts. (Rec., p.

32.) And by express words the trustee was herself vested with a beneficial interest.

Such a trust under all the authorities in Tennessee and elsewhere keeps the trust from being dry or passive and makes it an active trust.

In *Henson* v. *Wright*, 88 Tenn., 504, it is stated:

> "If *any* trust or duty is imposed on the trustee, *either* expressly or by implication, the trust is an active one, and in such case there is no merger of the legal and equitable interest and the interest of the beneficiary, not being a legal one, is not subject to levy of execution. *Henderson* v. *Heel*, 9 Lea, 25; *Jourolmon* v. *Massengill*, 86 Tenn., 93."

In 39 Cyc., 213, Title Trusts, it is stated:

> "A trust is active when the interposition of a trustee is necessary to carry out its purposes with respect to immediate or remote beneficiaries, and whenever it is necessary for the accomplishment of *any* object of the creator of the trust that the legal estate should remain in the trustee, the test being that the trustee has imposed upon him, *expressly or by implication*, some active and substantial duty to perform, or useful purpose to subserve, or discretion to exercise with respect to the control, management or disposition of the trust property, such as the investment or *reinvestment* and care of property . . . or the receipt and payment over of rents, income, profit or proceeds of the trust property to or for another with remainder over, as in the case of a trust for a spendthrift . . . nor is a trust executed where the *trustee* is entitled to a *beneficial interest* or estate in the trust property."

The court of Appeals correctly construed the bill and decree at Franklin and what "fund" was recovered thereby.

In the Statement of the Case, *ante*, the bill and its allegations and the prayer thereof were analyzed and it was shown, we think, that it was a suit brought in the right of

creditors to set aside a fraudulent conveyance or device to hinder, delay or defraud creditors. (*Ante*, pp. 8-11.)

The Court of Appeals properly construed its purposes. In the right of no other persons except creditors, as shown, under Tennessee law or decisions could the suit have been maintained.

Although the decree in terms did vest all the property conveyed back in Sedberry and then in the trustee, it was but a decree *sub modo*, to be construed in the light of the purposes of the suit and the result sought to be accomplished, which was to pay creditors, and, under the Tennessee statute, no more of the fund *could* be taken than was necessary to pay creditors' claims with interest.

Shannon's Code of Tenn., Sec. 6097.

In *McDowell* v. *McMurria* (Ga.), 73 Am. S. R., 155, a fraudulent conveyance was attacked by creditors for the reason that it was made to hinder, delay and defraud them and the grantor and grantee were made parties to the action. A judgment reciting that such deed was null and void, and that it be delivered up and cancelled, was held to mean only to the extent necessary to pay creditors, the court saying:

> "We know of no law which declares a conveyance made for the purpose of hindering, delaying, or defrauding creditors absolutely null and void. The provision of the statute, as will be hereafter more fully seen, is that such conveyance, when the intention of the grantor is known to the grantee, is fraudulent and void *as to creditors*. The proceedings taken to avoid this deed were by the creditors of the grantor; *the object had in view was, of course, to subject the property to the claims of the complaining creditors;* and when the decree declared that such deed was null and void and that it be delivered up and cancelled, in construing it reference must be had to the pleadings and *purposes of the bill, to ascertain the meaning of the decree.* The creditors who sought to have the deed invalidated were

not concerned with the relation which the law established between the grantor and the grantee of the instrument, but their bill was filed and prosecuted *alone* for the purpose, so far as this record shows or intimates, of subjecting the property conveyed to the debts of McMurria & Son; and it was not, from anything which we can gather from the record, filed for otherwise testing the title to the land, nor in the interest of anyone, *save* the creditors. *Under proceedings above indicated the court would not have had jurisdiction to declare such an instrument absolutely void, nor for canceling the same as to all persons.* The object of the bill would have been accomplished and the *powers* of the court *legally exercised* by decreeing such deed to have been fraudulent and void as to the creditors who were plaintiffs in the petition; and, construing it in the light of the pleadings and allegations as given in the record, such is its *true* meaning and effect. The deed made by A. I. McMurria to A. G. McMurria, trustee, having been made to defraud creditors, was as to them null and void, and the decree is *not* to be construed to go further and change the legal relation of the parties to the deed of conveyance."

As was well said in *Davis* v. *Gates* (C. C. A.), 235 Fed., 192:

> "It is manifestly impracticable in all cases to determine in advance the exact amount or proportion of the property fraudulently transferred, or its value it is necessary should be recovered by a trustee to insure the payment in full of the bankrupt's indebtedness; and further, if the result of a recovery by a trustee would be to put in his possession *more* than sufficient to insure such payment in full, any surplus would be turned over under direction of the court to the transferee or otherwise as justice might require."

To the same effect see:

Graham v. *Railroad Co.*, 70 U. S., 704;
Barnes v. *Railroad Co.*, 122 U. S., 1;
Huff v. *Bidwell* (C. C. A.), 195 Fed., 430;
Charles v. *White* (Mo.), 21 L. R. A. (N. S.), 481.

And so it was the Court of Appeals held (rightly as we think):

> "We do not overlook that the form of the decree by the state court purported to transfer the whole title to the trustee; but the form which happened to be taken by the state court cannot control either the substantial right or the construction of the federal statute. Whatever the form of the decree, the trustee would doubtless be required to make a release of his lien or a conveyance of his title—whichever the decree had given—upon payment or tender to him of the proper amount." (Op., C. C. A., p. 5.)

Statutes of Limitations.

It is argued now that the suit at Franklin could not have been a suit to set aside a fraudulent conveyance or device, because it would have been barred by the seven-year statute of adverse possession.

Counsel are careful themselves not to name their suit in terms.

To argue that it could not have been a suit to set aside a fraudulent conveyance or device to hinder or delay creditors because the statute might have been pleaded to defeat it, proves nothing. The fact is the statute of limitations was *not* pleaded and the suit went on. (Rec., pp. 41-46.)

In Tennessee the statute of limitations bars all suits connected with trusts, both express and resulting, as between strangers on the one side and the trustee and beneficiary on the other. So whether it was a suit to set aside a direct or resulting trust it would equally have been barred.

Hughes v. *Brown*, 88 Tenn., 578;
Boyd v. *Lee*, 12 Lea, 77;
Michie's Tenn. Dig., Vol. 8, pp. 451, 461.

But where a grantor makes a conveyance to a grantee in fraud of creditors, the statute does not begin to run as

against such creditors or their respresentative from the execution or recording of the deed, but only from the accrual of the grantor's creditors' right of action—which is held to be the date of the maturity of their debts.

Shannon's Code of Tenn., Sec. 6102 and note.
Jones v. *Read*, 1 Hum., 335;
Ramsey v. *Quillen*, 5 Lea, 184.

Shannon's Code, Sec. 6102, reads thus:

> "In no case shall the limitation of actions be held to commence running in favor of a fraudulent or voluntary possessor until *the creditor, to be effected* by the fraudulent or voluntary conveyance, has a right of action to test the validity of such conveyance."

So the fact remains that, as none of the debts scheduled in bankruptcy, in the right of whom the trustee sued, originated before 1912—within five years of the suit at Franklin (Rec., p. 42)—no statute of limitations could have been pleaded and, above all, none was pleaded. And, in any event, the character of the Franklin suit was determined by its own purposes and not by the course of pleading the defendants thereto might or might not have adopted.

The Court of Appeals correctly determined the extent of the recovery in the suit at Franklin under the facts and the appropriate sections of the Bankruptcy Act and the Statutes of Tennessee.

It is unnecessary to recapitulate the argument pursued by the Court of Appeals in reaching its conclusion. A reading of its opinion from pages 3-6 discloses clearly its reasoning on this point. To fortify its argument, we add:

There are vital differences between recoveries by the trustee of conveyances within and without the four months' period and the nature and extent of the title and interest that the trustee takes in the property recovered in the one case and the other.

At the outset it must not be forgotten that the Bankruptcy Act is not altogether a scientific, logical and consistent piece of legislation. There is a good deal of overlapping. General expressions are often misleading as written. Thus, in one of the earliest cases which arose under the present Act the learned Judge Lowell pointed out a number of such "contradictions, repetitions and redundancies."

In re Mullen, 4 A. B. R., 224.

This case is very illuminating, especially so as it treats of all those clauses of the Act which concern transfers in fraud of creditors, and the nature and extent of the title acquired by the trustee in the several cases.

This case with a learned opinion by the late Judge C. D. Clerk of Tennessee in the case of *Bush* v. *Storage Co.*, 136 Fed., 918, with some later cases, contained suggestions which lead us to doubt the correctness of the learned district judge's opinion in this allowance of attorney's fee out of the surplus.

These cases are too long to be here quoted from in extenso, but they lay down these rules of construction and distinction:

1. Certain transfers are deemed fraudulent in bankruptcy and are so "declared by the Bankruptcy Act itself," and are made absolutely null and *void*—as if they never were. These are all, however, transfers *within* the four months' limitation. These are

(a) Conveyances and transfers by which a creditor obtains a preference of his claim over other creditors.

(b) Conveyances which are intended to hinder, delay or defraud creditors.

(c) Transfer void as to creditors under the local law of the several states.

2. Besides this class of transfers made *void* by the Bankruptcy Act itself, there is another class which the trustee *may void* (*i. e.*, are voidable), provided "any creditor of such bankrupt might have avoided" same under the state law, "and may recover the property so transferred or its value from the person to whom it was transferred."

Bush v. *Storage Co.*, 14 A. B. R., 141.

This last class is "avoidable" under Sec. 70-a, which section "was not so much intended to avoid certain classes of transfers, as to declare the right of the trustee to avoid transfers voidable by *other* persons" (*i. e.*, creditors).

In re Mullen, 4 A. B. R., 227.

3. Section 70-e was not intended to define what conveyances creditors of the bankrupt might avoid, or to distinguish between the rights of the creditors taken together and the rights of the trustee in bankruptcy, "but only to give to the trustee *such* rights *as* the creditors or any of them possessed."

Re Mullen, 4 A. B. R., 228.
Davis v. *Willey*, 45 A. B. R., 349.

"The *right* which before bankruptcy belonged to the creditors (to set aside conveyances made more than four months before bankruptcy) passes from them and is vested in the trustee." The right is purely derivative and derivative only from creditors to the *degree* they are enjoyed by them under the state law.

Bush v. *Storage Co.*, 14 A. B. R., 140, 141, 145.

4. This peculiar right under Sec. 70-e does not pass "by operation of law from the bankrupt," as would be assumed from a literal reading of Sec. 70-a—it passes from the creditors under the state law. When the Act says in Sec. 70-a (4) that the trustee "shall be vested by operation of law with the title of the bankrupt to all . . . property transferred by him in fraud of his creditors," it

means all title and property passing under conveyances from the bankrupt, which the Act declares void, to-wit, transfers within four months (under Sec. 67-e and like sections).

5. When it comes to the title and right of the trustee to avoid transfers made beyond four months under Sections 70-a (4) and 70-e, "different considerations and different rules apply and he (the trustee) may then assert any right which the creditor might have asserted . . .; and the trustee may impeach or set aside any act or transaction of the bankrupt, and recover *property or its proceeds, just as creditors might have done if bankruptcy had not occurred and the rights and remedies of creditors had not been vested in the trustee.*"

Bush v. *Storage Co.*, 14 A. B. R., 144-145.

6. In such cases the Bank. Act "adopts the law of the state as defining and determining the rights of creditors" and derivatively of the trustee.

Ibid., p. 145.
Davis v. *Willey*, 45 A. B. R., 348.

In the last cited case the Court said (after setting out the provisions of Section 70-e):

> "It is well established that the effect of this section is to clothe the trustee with no new or additional right in the premises over that possessed by a creditor, but *simply puts him in the shoes* of the latter, and subject to the *same* limitations and disabilities as would beset the creditor in the prosecution of the action on his own behalf and the rights of the parties are to be determined, *not by any provision of the Bankruptcy Act*, but by the applicable principles of the common law, or the law of the state in which the right of action may arise."

In construing Section 70-e the article on "Bankruptcy" in 7 C. J., Sec. 284, says:

"The effect of this provision is to give to the trustee the *same* rights with respect to such transfers as are conferred on the bankrupt's creditors, or any of them, by the common or the statutory law *of the state where the property is located,* but *no other or further right.*"

As has been pointedly stated, as between the bankrupt and his fraudulent grantee, under a conveyance made anterior to the four months, the bankrupt has no title "which could vest by *operation of law*" in the trustee, and to give any effect or even meaning to Section 70-a (4), the words "title of the bankrupt" must be construed to mean "title as between the bankrupt and his creditors."

Chesapeake Shoe Co. v. *Selden* (C. C. A.), 122 Fed., 593.

Bush v. *Storage Co.*, 136 Fed., 918.

Now what is the "title as between the bankrupt and his creditors" as to property conveyed prior to four months?

We submit that in such cases it is *only* title to *so much and such parts* of the property fraudulently conveyed as are *necessary* to discharge the bankrupt's debts. And that, if it could be known *in advance* how much was needed for such purpose, then to *this* amount the title of the trustee extended *ab initio* and no further, and, with the "surplus," neither the bankruptcy court nor the trustee had any title, jurisdiction, or control, except to return the same to the parties entitled thereto.

Davis v. *Gates*, 235 Fed., 192.

Under Tennessee decisions and statutes, *as the District Court found,* no right or authority, title or jurisdiction, was given to creditors, attacking a fraudulent conveyance, to collect and seize more of the estate of the fraudulent grantor than was necessary to pay their debts. And that no authority existed in creditors, under Tennessee law, to lay

hold of, seize or retain an attorney's fee out of the surplus. Shannon Tenn. Code (Tenn.), Secs. 6097, 6099.

> "Creditor's bill to set aside fraudulent conveyances, etc.—Any creditor, without first having obtained a judgment at law, may file his bill in chancery for himself, or for himself and other creditors, to set aside fraudulent conveyances of property, or other devices resorted to for the purpose of hindering and delaying creditors, and subject the property, by sale or otherwise, to the satisfaction of the *debt*. (6097.)

> "Other creditors may come in by petition, when.—If the bill is filed by one creditor for himself and others, the other creditors may make themselves parties at any time before final decree, by petition, agreeing to join in the bonds required in the case, and giving bond, with good security, to the original complainant, and in a sufficient penalty to pay their proportional part of the recovery on such bonds." (6099.)

Bank v. *Heller*, 101 Tenn., 73.
Gibson Suits in Ch., p. 799.
12 R. C. L., p. 155.
Douglas v. *Bank*, 13 Pickle (Tenn.), 148.
20 Cyc., 825.
Huff v. *Bidwell* (C. C. A.), 195 Fed., 430.

In view of this well-settled Tennessee law, we submit, that the rights and title of the trustee, proceeding under Tennessee law and these appropriate sections of the Bankruptcy Act, when properly construed, to set aside this twenty-year-old deed, were to so much and so much only of the property as the creditors of the bankrupt under Tennessee law could equally have asserted.

In the very recent case of *Trust Company* v. *Duncan* (C. C. A.), 254 Fed,. 780; s. c., 43 A. B. R., 7, it was held that a recovery by the trustee under Sec. 70-e belongs to the creditor whose rights the trustee asserts and does not pass to the trustee "as part of the bankrupt's estate," and that

Sec. 70-e differs from Sec. 67-f in that under the former section the recovery does not pass to the trustee as part of the bankrupt's estate, whereas under the latter it does. Section 67-e of the Act says conveyances shall be "null and void" and all property of the debtor conveyed shall . . . *be and remain a part of the assets and estate and shall pass to his said trustee.* So does Section 67-f. Whereas Sec. 70-e says the trustee "may avoid," as any "creditor might have avoided," and "recover the property so transferred" (*i. e.*, we insist, meaning thereby as much *as necessary and as much as a creditor* under the state law has a right to recover). The court saying in the Duncan case as to Section 70-e, "It is significant that the statute does not so provide" (*i. e.*, that it should pass to the trustee and remain a part of the estate of the bankrupt). This case was affirmed by the U. S. Supreme Court in 63 (Law Ed.), U. S. Reports, p. 603.

It was argued below, and will doubtless be argued here, although no stress was laid on it by the District Judge, that the decree of the Chancellor at Franklin vested title to the *entire property in the trustee* (Rec., p. 62). That is true. There was no way to avoid it. Nevertheless it was but a decree *sub modo.* It does not prove that *all* the property legally was recovered by the trustee or passed into the bankruptcy court any further than the law or necessity demanded.

As was well said in *Davis* v. *Gates,* 235 Fed., 192:

> "It is manifestly impracticable in all cases to determine in advance the exact amount or proportion of the property fraudulently transferred, or its value; it is *necessary* that it should be received by a trustee to insure the payment in full of the bankrupt's indebtedness; and further, if the result of a recovery by a trustee would be to put in his possession assets *more* than sufficient to insure such payment in full, any surplus would be turned over under the direction of the court to the transferee or otherwise as justice might require."

To the same effect are:

Huff v. *Bidwell* (C. C. A.), 195 Fed., 430.
McDowell v. *McMurria*, 73 A. S. R., pp. 156-157.

So legally the bankruptcy court had no *jurisdiction* of, nor the trustee title to, any "surplus," and since all they took, or could take, was enough to pay the bankrupt's debts in full, with interest, any attempt to appropriate or deal with the estate beyond that point in payment of counsel fees was extra-judicial and could bind no one, whether consented to or not.

In concluding this assignment of error we submit the case of *Rogers* v. *Page* (6 C. C. A.), 140 Fed., 596, 149 Fed., 194, which the district court thought was "directly analogous," is distinguishable on very broad grounds. There a suit to set aside a fraudulent preference made "null and void" by the Bankruptcy Act, within *four months* of bankruptcy, was set aside. As the *whole* estate under Secs. 67-e and 67-f thereby passed "to and remained a part of the assets and estate of the bankrupt," that court properly allowed the trustee's attorney a fee out of the fund. This is not the present case which, we submit, is governed by wholly different considerations, as shown, and so thought the Court of Appeals.

The U. S. Court of Appeals for the Second Circuit has held that a trustee has a right to sell his right of action derived from creditors of the bankrupt, to set aside a transfer of the bankrupt, made more than four months before bankruptcy, and that the purchaser succeeds to the right of action vested in him.

In re Downing (C. C. A.), 201 Fed., 93.

Could such purchaser from the trustee have instituted this same suit at Franklin, Tennessee, and recovered not only the amount of the bankrupt debts but an attorney's fee from the Sedberrys? We submit not.

The Champertous Contract between the attorney and the trustee, of record, and sought to be specifically enforced, should, without more, have concluded this litigation at the outset.

Both the district court and the Court of Appeals seemingly thought the contract found in record at page 14 was champertous.

Op. Court Appeal, p. 3.
Op. District Court (Rec., p. 199).

Both courts, however, held it was *unnecessary* to pointedly pass on this question, as they held the contract invalid on *other grounds*—among others as violative of Sec. 62 of the Bankruptcy Act. And in any event, the Court of Appeals held, it was "not satisfied that an entire forfeiture of the fee must follow in a court of bankruptcy and under the *special circumstances here existing.*" (Op., p. 3.)

These "special circumstances" were:

(1) That this particular contract was approved by the Referee, and,

(2) Secondly, that every contract for a fee between an attorney and a trustee in bankruptcy "is made with knowledge that, primarily the referee and ultimately the district court must approve and must make an award before payment can be made. Each contract, therefore, in effect has written into it "subject to the approval of the court." (Op. Court of Appeals, p. 3.)

Does the fact that this fee contract was approved by the Referee or even if it had contained a clause "subject to the approval of the referee and the district court," relieve it of the *effect* of its champertous nature and of *seeking* herein to *still specifically* enforce it?

And is it "unnecessary" to pass on its nature, where it is made a matter of record by the attorney, the basis of his claim, and sought in a federal court to be specifically enforced?

If the referee's approval of the contract could *not* relieve it of violation of Section 62 of the Bankruptcy Act—a statute merely *malum prohibitum*—how can the same approval relieve it of violation of the laws relative to champerty—a thing *malum in se?* (1 Pick., 415.)

Both the attorney and the trustee were members of the Nashville Bar and were chargeable with knowledge of the law.

How can judicial officers by their approval relieve of its consequences a contract so odious as the one in question? Courts do not make or unmake settled laws, but merely enforce them.

The Court of Appeals say that the reason champertous contracts are punishable and contrary to public policy is because "they tend to stir up litigation which otherwise would not be brought. This reason applies with full force to unsupervised contracts of attorneys," and inferentially the reason fails where "supervised" and approved by the court.

Can a reading of this contract and the testimony of Mr. Stokes leave anyone in doubt that the promise of a 50 per cent fee was not the consideration leading him to assume all the costs and hazards of the litigation and to agree to indemnify and hold his client harmless?

Can anyone doubt that *without such a contract,* whether supervised or unsupervised, no litigation would ever have been stirred up? It was not the approval and supervision of the contract that initiated the litigation, but the hope on

the attorney's side of a 50 per cent fee and the immunity promised the client of all liability for costs and expenses. Leave these elements of the contract out, whether supervised or unsupervised, and would any litigation have arisen? The trustee and Mr. Stokes furnish the answer.

Rec., pp. 80, 82 (Watkins).
Rec., pp. 111, 168 (Stokes).

Mr. Stokes says:

> "If I had not advanced (?) the expense money, there would have been *no* estate created." (Rec., p. 168.)

Of course, he was not "advancing" any expense money. He was contracting and binding himself to his client to save the latter harmless, in the event of failure. (Rec., p. 14.)

> "As before stated, an agreement to loan the client funds with which to carry on the suit or to maintain himself is not regarded as *per se* opposed to public policy. *It is only when the client is indemnified from liability* for them in case of *no recovery*, that the law declares the *arrangement void.*"
>
> *Johnson* v. *Railroad*, L. R. A. (N. S.), 1917-B, at p. 1143;
> *Stark Co.* v. *Mischel*, 6 A. L. R., 181;
> 11 C. J., p. 245, title "Champerty."

Was it the terms of this contract (what it provided for) that "stirred up" this litigation?

Did the approval of the referee stop the "stirring up" of litigation which would otherwise not have been brought? Did the approval of the referee lessen this "stirring up"? Nay, did it not rather add thereto?

The vice was *in* the contract. The approval, we submit, cannot take the vice out of it nor *lessen* the tendency and purpose already formed *to stir up litigation* that would otherwise *not* have been brought.

Unless the reasons given by the Court of Appeals for not enforcing the consequences of champerty in the instant case are sound, it will become important to determine whether this was a champertous contract and the consequences flowing therefrom.

Without elaborating our argument on this point (as was fully done in the Court of Appeals) we will give a bare synopsis of the same:

Contract Champertous. Its consequences.

(1)

In the federal courts a contract between an attorney and client to undertake litigation, to guarantee his client against costs and expenses, in the event of failure, and to receive as his compensation a portion of the recovery, is champertous and opposed to the settled public policy of such courts. It will be noticed by such courts of their own motion, when apparent of record, and need not be pleaded or assigned as error. Appearing it will result in dismissal of the suit for the attorney's fee.

Peck v. *Heurich*, 167 U. S., 167;
Film Co. v. *Samplincr* (C. C. A.), 233 Fed., 95;
Casserleigh v. *Wood* (C. C. A.), 119 Fed., 308;
Jones v. *Pettingill* (C. C. A.), 245 Fed., 269; S. C., certiorari denied, 245 U. S., 663;
Sun Life Ins. Co. v. *Cassanova* (C. C. A.), 260 Fed., 449.

(2)

There is a vast distinction between a *loan* of expense money from the attorney to client and a contract to *indemnify* and hold client harmless, in event of no recovery, as here. (Rec., p. 15.)

11 C. J., p. 245, title "Champerty."
Johnston v. *Railroad*, L. R. A. (N. S.), 1917-B, at p. 1143;
Stark County v. *Mischil*, 6 A. L. R., p. 181.

(3)

In Tennessee also such contracts are champertous and where appearing its courts will, of their own motion, refuse to proceed.

Heaton v. *Davis*, 103 Tenn., 160;
Hayney v. *Coyne*, 10 Heisk., 339;
Staub v. *Coal Co.*, 140 Tenn., 505.

(4)

Champerty, when once called to the court's attention or noticed in its own investigation, precludes any recovery. It cannot be waived or stipulated out of the case. The attorney is denied relief, not out of consideration for the client, but for reasons of public policy.

11 C. J., 272, top note;
Miles v. *Ins. Co.*, 108 Wis., 421;
Decker v. *Decker*, 143 Wis., 542.

(5)

In both the Federal and Tennessee courts, champerty appearing, no recovery will be allowed either on a contract or upon a *quantum meruit*. Such is also the better considered rule in other states. To do otherwise would be to allow indirectly to be done what cannot be done directly.

Murray v. *Roller*, 38 L. R. A. (N. S.), 1202 and top p. 1206;

Other *state* cases to the same effect are:

Moreland v. *Devenney*, 72 Kan., 471; s. c., 83 Am. Dec., 1097.
Gammons v. *Gulbranson*, 78 Minn., 21.
Taylor v. *Perkins*, 171 Mo. App., 1035.
Thurston v. *Peck*, 1 Pick (Mass.), 415.
Butler v. *Legro*, 62 N. H., 350; s. c., 13 A. S. R., 573.
Mazurian v. *Mogan*, 25 La. Ann., 281.
Burgrover v. *Pettigrew*, 128 Iowa, 533; S. C., 2 L. R. A. (N. S.), 260.
Johnston v. *Railroad*, L. R. A. (N. S.), 1917-B, at p. 1143.

Stark County v. *Mischel*, 6 A. L. R., 181.
Hudson v. *Shafe* (S. D.), 171 N. W., 320.
Webb v. *Armstrong*, 24 Tenn., 378.
Hayne v. *Coyne*, 10 Heisk. (Tenn.), 39.
Keaton v. *Dennis*, 103 Tenn., 160.
Staub v. *Coal Co.*, 140 Tenn., 505.

(6)

No change resulted in the Tennessee law of champerty, as applied to a suit by an attorney *against* his client for the fee based on the champertous contract, from the Act of 1899, Ch. 71. That act only repealed the Act of 1821, Ch. 66, which had *enlarged and extended* the common law and the result was to leave the common law on the subject in full force and effect.

Robertson v. *Cayard*, 111 Tenn., 356.

The common law of England "not positively and definitely changed by statute" is in full force and effect and the law of Tennessee.

E. W. M. v. *J. C. M.*, 2 Tenn. Ch. App., 463;
Moss v. *State*, 131 Tenn., 94;
Graham v. *State*, 134 Tenn., 285.

The last expression of the Tennessee Supreme Court merely holds that A's suit against B will not be dismissed because of A having entered into a champertous contract with his lawyer to prosecute it. Not that the lawyer's suit against A on his contract to recover his fee would not be dismissed in Tennessee now as heretofore.

Staub v. *Coal Co.*, 140 Tenn., 505.

(7)

Distinctions sought to be made by Mr. Stokes to avoid effects of champerty are not sound. These are:

(a) That since court sales of land held adversely in Tennessee are not champertous, under Act of 1821, therefore, contract in question between Stokes and trustee was protected because Referee approved it.

Reply: It was not necessary for the Act of 1821 to have made any such exception. That act only applied to "voluntary" sales. A court sale is "involuntary" and not within purview of act.

Clain v. *Easley*, 4 Bax., 520;
Todd v. *Henn*, 8 Hum., 514.

There was nothing "involuntary" about the contract between the trustee and his attorney.

(b) That Mr. Stokes had such "an interest" in the claims of his clients (Broadway National Bank and Rumley Company) as permitted him to make a champertous contract with the trustee with impunity.

Reply: The nature of his "interest" appears in record at p. 129.

This was not an "interest" in the subject matter of the suit against Sedberry.

11 C. J., pp. 250-251;
Sidway v. *Jones*, 125 Tenn., 325;
Taylor v. *Purkins*, 157 S. W., 122; 6 A. L. R., 181.

(c) That because Mr. Stokes honestly thought he had an interest in the "subject" matter of the Sedberry suit, he could not be chargeable with the usual results of his champertous contract.

Reply: On matters of law what an attorney of sixteen years' experience at the bar and what a layman might suppose are wholly different. An attorney is bound to know the well-established principles of law "settled by text-books and cases published long enough for him, exercising reasonable diligence, to have informed himself of them."

Hill v. *Mynatt* (Tenn. Ch. App.), 59 S. W., 163.

(d) That if "political" bodies cannot be guilty of enter-

ing into champertous contracts with attorneys, neither could Mr. Stokes because his contract was approved by the referee (a court).

Reply: Because the "political" bodies by *legislation*, for the purposes of the particular case had *changed* the law. The case he cites of *Davis* v. *Commonwealth* (Mass.), 41 N. E., 292, shows this distinction.

A county cannot, it has been held, make a champertous contract with an attorney.

Stark Co. v. *Mischel*, 6 A. L. R., 198.

Courts are not such "political" bodies. They have no legislative powers.

(e) That none but an actual party to a champertous contract can plead its invalidity.

Reply: Anyone against whom it is sought to be enforced can raise its illegality.

11 C. J., p. 271, Sec. 104.

Referee's Order not binding.

The lower courts are also claimed to have erred in not holding that the order of the Referee, approving the petition of the trustee to employ an attorney, made and entered on October 24, 1917, was binding on the Sedberrys because not appealed from by them in the time allowed by the rules of the District Court. The lower courts answered this contention very cogently, we think, by observing that such order could not bind Mrs. Sedberry and her children, out of whose estate this fee is sought, as they were not parties to the cause and not bound by any orders therein, even if the Referee had authority to make any such order (which the courts held he did not). Also, the courts found "that neither they nor the bankrupt had any actual notice that this order

had been entered." (Rec., p. 199.) So the order would not bind, if the same was an "order" of the Referee within the provision as to petitions to review. As, being not authorized by law, *ex parte*, and seeking to bind persons not before the court and who had no actual notice thereof would seem to answer this assignment of error. Also no notice was given to the creditors thereof.

Again, this consideration should not be overlooked: The petition filed by the trustee on October 24, 1917, asking permission to employ counsel, said nothing and put no one on notice of anything, except:

(1) That the trustee desired to employ counsel.

(2) That Mr. Stokes was willing to work on a contingent fee and "bear the burden of the expenses." (Rec., p. 12.)

Not a suggestion that he was to get or ask half the "recovery" as a fee.

And the order entered pursuant to such petition merely recites that, on said petition and the statement of the attorney in open court, that "he was willing to enter into a contract on a contingent basis, with the trustee in bankruptcy, and that he was willing personally to put up all funds necessary to defray the expenses of prosecuting suits for the recovery of property, etc. . . . it is ordered *that the prayer of the petition be granted,*" and that the trustee be empowered to employ Stokes on a "contingent basis," as his attorney . . . "the said Jordan Stokes, Jr., to be personally responsible and to pay all expenses incurred in the prosecution of any suits." (Rec., p. 13.)

How would Mr. Sedberry, Mrs. Sedberry, or the children reading said petition or said order know or understand that all this meant a lawyer had not only been em-

ployed on a contingent basis to proceed against them, but was to get 50 per cent of what he recovered? The petition does not say so, the order does not say so. All this was reserved for the "contract" later entered into between the trustee and Mr. Stokes, which was *not* a matter of *record*, of which the Court finds neither the Sedberrys nor their attorneys knew anything, until after signing the decree at Franklin agreeing not to appeal. Not only did they know nothing of this "contract," but Mr. Stokes' own associate counsel, Mr. Crockett, said he first heard of it after the decree at Franklin agreeing not to appeal had been entered. (Rec., p. 131.)

Recovery and Fee both based on claims of Creditors.

Another error Mr. Stokes and associates assign is that the lower courts erred in holding the allowance of counsel fees to the trustee "should be based upon the amount of claims provable and filed in the case and not upon the total amount of the recovery or assets coming into the hands of the trustee in bankruptcy." (Rec., p. 234.)

Did we not see able counsel still pressing this contention, and had we not heard their witnesses below speak of and base their opinion of the fee on a "$100,000.00 recovery," we should not have supposed such a contention even had the merit of seriousness. It was utterly repudiated by both the Referee and the District Judge and the Court of Appeals.

On this point the court referred to and relied on *Page* v. *Rogers*, decided by that Court and reported in 15 Am. Bank. R., 502, opinion by Judge Lurton. And that case definitely settles the question, since it was approved by the Supreme Court of the United States (211 U. S., 575). There the Court said:

> "As between the parties to the instrument, it was, if made and held in good faith, a perfectly valid se-

curity . . . (it was, however) a preferential payment to Thos. Merriam for which his executors must account with interest, if that sum be *necessary* for the payment of all debts of every class which have been or may be proven against the bankrupt and the expenses of the trustee, his fees and the costs of the bankrupt cause. But *only to the extent necessary to* the payment of claims, costs and expenses is there *any equitable* reason for recovering the preferential payment received by Thos. Merriam."

On appeal Justice Moody, for this Court, observed:

"The theory upon which the decree proceeded was, that no greater sum should be required of the defendant than would be needed to meet the amount of the claims proved or provable against the bankrupt and the costs and expenses of the administration of the bankrupt estate, including fees of counsel for the trustee."

That was a suit to set aside a preference made *within* four months of the bankruptcy, as the Court of Appeals pointed out.

For the reasons stated it is submitted that the petition for a writ of certiorari is not well founded and should be denied.

Respectfully submitted,
CHARLES S. LAWRENCE,
NORMAN FARRELL,
Attorneys for the Sedberrys.

Office Supreme Court, U. S.
FILED
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No. 690

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

THOS. G. WATKINS, Trustee,
JORDAN STOKES, JR.,
JOS. R. WEST,
R. H. CROCKETT,

Petitioners

vs.

J. H. SEDBERRY,
Z. C. SEDBERRY,
J. B. SEDBERRY,
W. H. SEDBERRY,
CATHERINE SEDBERRY OVERALL,
FALLEY OVERALL,

Respondents.

PETITION OF THOS. G. WATKINS, TRUSTEE IN BANKRUPTCY OF J. H. SEDBERRY, AND JORDAN STOKES, JR., JOSEPH R. WEST, AND R. H. CROCKETT, FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

C. C. CALHOUN,
JOHN R. AUST,
CLARENCE T. BOYD,
JORDAN STOKES, JR.,
JOS. R. WEST,
Attorneys for Trustee, et al.

Hermitage Printing Co.

ors for Certiorari. See pages 27-32. of

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

THOS. G. WATKINS, Trustee; JORDAN STOKES, JR., JOS. R. WEST, R. H. CROCKETT ----------Petitioners

vs.

J. H. SEDBERRY, Z. C. SEDBERRY, J. B. SEDBERRY, W. H. SEDBERRY, CATHERINE SEDBERRY OVERALL, FALLEY OVERALL ----------Respondents

---

PETITION OF THOS. G. WATKINS, TRUSTEE IN BANKRUPTCY OF J. H. SEDBERRY, AND JORDAN STOKES, JR., JOSEPH R. WEST, AND R. H. CROCKETT, FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

This controversy originated by a petition filed before the Referee for the Nashville Division of the Middle District of Tennessee on behalf of J. H. Sedberry, the bankrupt; Z. C. Sedberry, W. H. Sedberry, J. B. Sedberry, Catherine Sedberry Overall and Falley Overall, hereinafter referred to as respondents.

Record, p. 68.

The petition recites that as a result of a suit instituted by Watkins, Trustee, against the bankrupt and others, that *the title to a farm and a large amount of personal property was decreed to have been in the bankrupt* and to have passed to his Trustee in Bankruptcy. That such property is largely in excess of the amount necessary to pay debts, and prays that the Court fix the total amount of the provable claims, expenses and costs of the proceeding in bankruptcy, and a reasonable attorney's fee, and that the trustee be directed to join in a mortgage in order to raise the funds with which to pay off and discharge all of the claims of the creditors in full, and the costs and expenses of the bankruptcy proceedings, *including attorney's fees.*

Record, p. 68.

To this petition, answers were filed by Watkins, trustee, and Stokes, West and Crockett, hereinafter referred to as petitioners. Such answers were also, if necessary, treated as cross petitions. And in said answers, the contract between the trustee and petitioner Stokes, providing for attorney's fees, was set up, such contract providing for a contingent fee of 50% of the recovery.

Record, pp. 73, 88.

Note.—Italics in the petition and brief are ours.

To the answers and cross petitions, the Sedberrys filed an answer, attacking the contract between the trustee and petitioner Stokes, on the ground of (1) champerty, and (2) as being unauthorized.

Record, p. 117.

Testimony was taken before the Referee.

STATEMENT OF THE CASE.

Before stating the holdings of the lower courts, it is necessary to set out a brief history of the case in the Chancery Court of Williamson County, Tennessee, as well as the instant case. This is necessary on account of the construction the Circuit Court of Appeals places upon the decree of the Chancellor, which construction results in serious loss to creditors.

J. H. Sedberry filed his voluntary petition in bankruptcy on April 24, 1917, scheduling in effect, no assets, and he was duly adjudged a bankrupt.

Record, pp. 1, 10, 103.

Petitioner, Thos. G. Watkins, was elected, appointed and qualified as Trustee.

Record, pp. 10, 103, 104.

Petitioner Watkins, Trustee, sought out petitioner Stokes and requested him to represent him and make investigations to see if any assets were being fraudulently concealed, with the understanding that petitioner Stokes' employment would be upon a contingent basis; the exact percentage was not, however, agreed upon in the beginning.

Record, pp. 79, 80, 81, 104.

Petitioner Stokes associated petitioner Jos. R. West, an attorney of the Nashville (Tennessee) Bar, to assist him in this case.

Record, p. 104.

Petitioners Stokes and West investigated both the law and facts with reference to the title to the farm located in Williamson County, Tennessee, and personal property and effects located thereon, the deed to the farm standing in the name of Z. C. Sedberry, Trustee, and being dated January 1, 1902.

Record, pp. 104, 105.

Petitioners Stokes and West had to make trips out of Nashville, Tennessee, to interview numbers of persons and investigate records, including the bank account and other papers of the bankrupt, and of the Trustee, in the hands of the Williamson County

Banking & Trust Company, making copies of a large amount of papers and checks.

Record, p. 104.

Petitioners Stokes and West also had to investigate the records of the Register's office, the County Court Clerk's office, the Clerk and Master's office, and the Circuit Court Clerk's office, at Franklin, Tennessee, from 1890 to October, 1917.

Record, pp. 104, 105.

The Distrcit Judge finds on this question, as follows:

> "Undoubtedly, however, the preparation of the case (Chancery case) involved a large amount of work and careful and painstaking investigation of the records and of the facts connected with the transactions in question, which extended over a large number of years, and the outside investigation of many matters which did not result in obtaining direct testimony."
> Record, p. 204.

As a result of such investigations, petitioners Stokes and West advised a general examination of the bankrupt and his family. There being no assets of this etsate, and no source from which any moneys could be secured with which to pay the U. S. Marshal for summoning the bankrupt and his family, or to pay the stenographic costs of the taking of the tes-

timony, petitioner Stokes, at the request of the Trustee, personally assumed and agreed to advance the moneys necessary for this purpose.

Record, pp. 105, 106.

The bankrupt was interrogated with particular reference to *a farm located in Williamson County, Tennessee*, and the products and income derived therefrom, and personal property located thereon, which was the identical property afterwards decreed by the Chancellor to be the property of the bankrupt, and the title to which was vested in the Trustee in bankruptcy.

Record, pp. 55, 60.

The testimony of the bankrupt was evasive, and he sought in every way to avoid giving any information whatsoever with reference to all the property belonging to him *which he had concealed and hidden out and not scheduled.*

Record, pp. 55, 60.

The examination of the bankrupt was conducted with reference to the identical property, title to which was vested by the Chancellor in the Trustee in bankruptcy.

Record, pp. 55, 60, 62, 68, 106.

Petitioners Stokes and West advised petitioner Watkins, Trustee, that in their opinion the bankrupt held the real title to this property. Petitioner Watkins, Trustee, stated that he had no funds of the estate and that there were no assets whatsoever, and *that he could not execute any bonds or take any steps looking to securing these assets, except upon a contingent basis.* And thereupon, at the request of petitioner Watkins, Trustee, petitioner Stokes agreed to undertake, and accept employment, to try the question of title to these assets, petitioner Stokes being of the opinion that the real title thereto as a matter of fact and law, was in the bankrupt, and passed by operation of law to his trustee. *The amount of claims scheduled by the bankrupt, or the amount of claims that might probably be filed against this estate, were never discussed or considered in any way by any parties, at any time, with reference to the employment of petitioner Stokes.* Petitioner Stokes agreed that he would personally advance the expenses incident to the prosecution of the litigation, at the request of petitioner Watkins, Trustee. This agreement was made about 60 days after adjudication of bankruptcy.

Record, pp. 106, 107.

A petition was thereupon filed by petitioner Watkins, Trustee, before the Referee, asking for author-

ity to contract with petitioner Stokes upon a contingent basis. *All of the facts were fully communicated to the Referee prior to and at the time of the filing of the petition.*

Record, p. 107.

The Referee signed an order or decree authorizing the petitioner Watkins, Trustee, to contract with petitioner Stokes, upon a contingent basis.

Record, p. 107.

Thereupon, the following contract was entered into between petitioner Stokes and petitioner Watkins, Trustee, *and approved by the Referee*, in pursuance to the prior employment and said petition and decree:

Record, pp. 107, 111, 182.

> THIS CONTRACT OR AGREEMENT entered into by and between Thos. G. Watkins, Trustee in Bankruptcy of J. H. Sedberry, Party of the First Part, and Jordan Stokes, Jr., of Nashville, Tennessee, Party of the Second Part, WITNESSETH:
>
> That, WHEREAS, under and by virtue of the authority conferred upon the Party of the First Part by the Bankruptcy Law, and especially an Order this day made by the Honorable Lee Brock, Referee in Bankruptcy; and,
>
> WHEREAS, the Party of the Second Part has heretofore rendered services to the Party of the

First Part and to the estate of J. H. Sedberry, Bankrupt, in the examination of witnesses, investigation of records, and generally, in ascertaining the condition of the bankrupt's property; and,

WHEREAS, the Party of the Second Part is of the opinion that he can recover a substantial amount of property belonging to the estate of J. H. Sedberry, Bankrupt, and the Party of the Second Part having signified that he is willing to accept employment upon a contingent basis, and there being no assets of the estate, that he, in addition, is willing to bear the expenses necessary:

NOW, THEREFORE, the Party of the First Part and the Party of the Second Part have this day agreed as follows:

The Party of the First Part employs the Party of the Second Part as his Attorney for him and in his name, to institute such suits as may be necessary, and proceed generally to recover any and all property that he may be able to locate, belonging to the estate of J. H. Sedberry, Bankrupt, with full power and authority in the Party of the Second Part to employ such attorneys to assist him as in his discretion he may deem advisable. Also, with full power and authority in the Party of the Second Part to receipt for, settle, collect and adjust any suits or claims that he may prosecute for the collection or recovery of any property belonging to the estate of J. H. Sedberry, Bankrupt.

Any property, funds or assets that may be recovered or secured for the estate of J. H. Sedberry, Bankrupt, shall first be chargeable with the amount that the Party of the Second Part has expended in his necessary expenses in investigating and prosecuting claims and suits,

and after such amounts shall have been deducted in favor of the Party of the Second Part, then any balance that may remain shall be divided equally between the Party of the First Part and the Party of the Second Part.

The compensation of the Party of the Second Part shall include all compensation to be paid to him and any attorneys assisting him; and the expenses contemplated by this agreement to be paid by the Party of the Second Part are the necessary expenses, such as stenographic charges, court costs, bond, necessary traveling expenses, and such items as are incident thereto.

The Party of the Second Part guarantees the Party of the First Part against any and all damages and expenses growing out of his employment.

IN TESTIMONY WHEREOF, we have hereunto signed our names this, the 24th day of October, 1917.

THOMAS G. WATKINS, *Trustee,*
Party of the First Part.
JORDAN STOKES, JR.,
Party of the Second Part.

Record, p. 14.

The Referee approved the foregoing contract, without reservation.

Record, p. 111.

The foregoing contract and the decree and approval of the Referee thereof, were never questioned until after the services of Petitioner Stokes had been fully prformed, and until after title had been vested

in the Trustee, to the identical property under consideration at the time the contract was entered into.

Record, pp. 112, 113.

Relying upon this contract, petitioners Stokes and West filed the Original Bill in the Chancery Court of Williamson County, Tennessee, on October 24, 1917. Receivers under said bill were appointed.

Record, pp. 30, 113.

After the filing of the bill, petitioners Stokes and West continued their investigations, interviewing of witnesses, looking up records, having copies made of records in the various offices of Williamson County, Tennessee, and also having an entire transcript of the record in the Bankrupt Court, including the general examination of the bankrupt and others, made, all to be used as evidence in the Chancery Court case, taking depositions of parties, examining into the railroad records at Thompson Station, Tennessee, with regard to shipments, both prior and subsequent to bankruptcy, which had been made by the bankrupt.

All of these investigations and proceedings were strenuously opposed by the bankrupt and his family, through able counsel employed by them.

Record, pp. 113, 114.

On May 18, 1918, D. M. Ferry & Co. filed a petition in the Chancery Court case, seeking to secure possession of turnip seed grown upon said farm. In their petition, they at first claimed that these seeds were the property of Sedberry, the bankrupt, and that they were entitled to them under a contract between themselves and the bankrupt, entered into prior to bankruptcy. Petitioner Stokes thereupon associated petitioner R. H. Crockett, an attorney of the Franklin, Tennessee, bar, to assist him in the further prosecution of these suits.

Petitioner Stokes and his associates prepared demurrers to the petition of D. M. Ferry & Co., which demurerrs resulted in D. M. Ferry & Co. amending their petition and claiming said turnip seed were the property of Z. C. Sedberry, Trustee, and that their contract was had with her through J. H. Sedberry acting as her agent. Upon the hearing of this petition as amended, which resulted in a decree ordering D. M. Ferry & Co. to pay the amount agreed upon in said contract for said turnip seed, namely, $5,287.00, and that they should execute bond in the sum of $21,000, conditioned that in case the Court should decree title to said turnip seed to be in J. H. Sedberry, or his Trustee in Bankruptcy, then they should pay the difference between 13½ cents per pound and the market value of said turnip seed, in no event to be less than 40 cents per pound. Bond

was executed in accord with the decree, such bond being taken in the name of L. W. Buford and Newt. Cannon, Jr., Receivers in the Chancery Court cause. On final hearing, the Chancellor held that the turnip seed belonged to the bankrupt and gave judgment in favor of the Trustee on the bond.

Record, p. 114.

Petitioner Stokes and his associates continued their investigations and preparations, taking depositios and cross-examining witnesses introduced by the defendants in said Chancery Court case, all of which consumed a large amount of time and extended over a period of approximately two years from the date of the filing of the bill to the final trial of the case before the Chancellor, during which time petitioner Stokes and associates devoted a large amount of time to the making of such investigations, examination of records, and taking of depositions and preparation of the record, and generally preparing the case for trial.

They were actually engaged in the trial of said case for several days, and two days were consumed in the argument.

Record, p. 115.

Petitioner Stokes and associates made many trips to Franklin, and Thompson Station, Tennessee,

sometimes going by interurban and sometimes by automobile.

Record, p. 115.

In the preparation of certified copies of records, Miss Aline J. Swain, the regular stenographer of Mr. Stokes, went to Franklin, Tennessee, on a number of occasions in making these copies. She also went to Franklin, Tennessee, in the taking of depositions. She did a very large amount of stenographic work generally in the preparation of copies of the bankruptcy proceedings to be used as evidence in the Chancery Court case and the making of other records and in the transcribing of a large number of papers, some of which were not introduced in evidence, although all of said work was necessary to the successful prosecution of this case. Miss Swain devoted many hours overtime at night and on Sundays in the preparation and transcribing of the papers and her services were worth much more than $500.00; and if such services had been secured from a regular court reporter, his charges therefor would have been largely in excess of $500.00.

Record, p. 115.

All necessary papers, pleadings, decrees, etc., had to be drawn by petitioner Stokes and his associates, including the final decree which was entered, all of

which work consumed a large amount of time and painstaking and careful preparation of such papers. And petitioner Stokes and his associates were at all times opposed by the bankrupt and the members of his family, and all matters were vigorously contested by them through able counsel.

Record, p. 115.

In case Mr. Stokes had been unsuccessful he would doubtless have been held liable in a large sum, from $10,000 to $15,000, on account of the appointment of Receivers.

Record, p. 80.

The validity of the contract between petitioner Stokes and petitioner Watkins, Trustee, is not questioned by the Trustee, or any creditor, but alone by the bankrupt and the members of his family.

Record, pp. 68, 117.

The right of the bankrupt and his family to question the validity of this contract is denied.

Record, p. 102.

The contract is relied upon in all respects by petitioner Watkins, Trustee, and petitioners Stokes, West and Crockett, and petitioner Watkins, Trustee, insists upon his contract being carried out.

Record, pp. 79, 80, 101.

No petition to review the order and approval of the Referee of this contract has ever been filed.

The Trustee could not have secured counsel except upon a contingent basis as to his fee; and had a contingent contract not been entered into, there would have been no assets of this estate.

Record, pp. 82, 135, 136.

The result of this contract alone, was the vesting of title in petitioner Watkins, Trustee, of property to the amount of $99,743.01.

Record, pp. 182, 194.

The reasonableness of the compensation provided for in the contract between petitioner Stokes and petitioner Watkins, Trustee, is abundantly established by the testimony of the following leading and prominent lawyers of the Nashville, Tennessee, Bar:

Judge Harry A. Luck, R. T. Smith, Jordan Stokes, Sr., R. B. C. Howell, Walter Stokes, F. A. Berry, Judge Jos. C. Higgins, Jos. R. West, R. H. Crockett, Jordan Stokes, Jr.

Record, pp. 132, 134, 135, 137, 138, 167, 169, 176.

ISSUES IN THE CHANCERY COURT CASE

The Bill under which title to the assets of this estate was vested in petitioner Watkins, Trustee, charges as follows:

> "That defendant J. H. Sedberry is the owner of the fee simple title to the farm hereinbefore described and set out in Exhibit 'A' to this Bill. That said J. H. Sedberry is the absolute owner of all the personal property and proceeds thereof located thereon, together with all crops, both harvested and those that are growing upon said farm, and that it is absolutely necessary for the preservation of said property, that a Receiver be appointed," etc.
>
> Record, pp. 24, 25.

> "That defendants W. H. Sedberry, J. B. Sedberry and Catherine Sedberry Overall are the only children of defendants J. H. Sedberry and his wife, Mrs. Z. C. Sedberry, and they are made defendants to this suit on account of the fraudulent manner the deed to said farm was made; and they are made such defendants to represent themselves and all other children that may be born to said J. H. Sedberry and Mrs. Z. C. Sedberry, and *in order that all clouds may be removed from the title to said farm.*"
>
> Record, p. 25.

In the original Bill it is charged that the purpose or motive causing the bankrupt to have this property conveyed to a trustee was, *to defraud his creditors*

by thus concealing his property, and at the same time owning it. The farm could be conveyed, by the express terms of the deed, if the bankrupt J. H. Sedberry should join in the deed.

Record, pp. 18-27.

There is no prayer to set aside this deed, for any reason. The relief prayed for on this point is as follows:

> "7th: That your complainant be declared to be the *owner of the farm* set out and described in the foregoing Bill, and that said farm be sold on a credit of six, twelve and eighteen months, free from the equity of redemption, and the proceeds be applied in paying the costs and expenses of these proceedings; the amount due Mrs. Mary D. Glass, Executrix, and the balance be paid to your complainant.
>
> 8th: That complainant be decreed to be *the owner of all said personal property and growing and harvested crops on said farm*, and the same or the proceeds thereof, paid or delivered to him."
>
> Record, pp. 28, 29.

We quote from the final decree of the Chancellor as follows:

> "That the conveyance heretofore made by W. J. Zellner and wife to Z. C. Sedberry, Trustee, on January 1, 1902, of record in Book 23, page 202, of the Register's Office of Williamson County, Tennessee, conveying said land, is void as

against the complainant in this cause, *and that the real title to said land aforesaid, property located thereon and income and proceeds thereof, was and has been in defendant J. H. Sedberry from the time of the taking of said deed, namely, January* 1, 1902; *and that upon the bankruptcy of defendant, J. H. Sedberry, and appointment and qualification of his Trustee, the complainant in this cause, the title to such property passed to and vested in the complainant, Thos. G. Watkins, Trustee in Bankruptcy of J. H. Sedberry, by operation of law.*" Final Decree of the Chancery Court at Franklin, Tennessee. Record, pp. 64, 65.

The proof introduced in the Chancery Court case was all looking to establish who was the owner of the real title to this property; and the proof with regard to the fraudulent intent of the bankrupt, was merely corroborative of the evidence introduced to show that the bankrupt, as the Chancellor held, was the *real owner of the title to all of this property*, and had *fraudulently failed to schedule this property, and had concealed the same from his Trustee in Bankruptcy.*

FRAUD OF BANKRUPT.

The fraud of the bankrupt is material as affecting his rights, if any, and the rights of his wife and children, if any, under the authorities cited in support of this petition. and we, therefore, bring to the attention of the Court, briefly, the fraud of this bankrupt and his family.

The bankrupt, on August 24, 1917, at the time he filed his petition in bankruptcy, *knew that he was the real owner and held the real title to the assets of this estate.*

The bankrupt made contracts with regard to the assets of this estate, *in his own name*, without any one joining.

Record, pp. 57, 61.

The bankrupt mortgaged divers and sundry of the assets of this estate, executing the mortgage in his own name without the joinder of any party whatsoever.

Record, pp. 59, 60.

The bankrupt exercised all rights of ownership over these assets, and treated and dealt with them as his own.

Record, pp. 55, 61.

Immediately after bankruptcy, the bankrupt's wife and one son, the only other members of the family examined, both disclaimed any interest in this property, and said that it was the property of the bankrupt, such disclaimer and statement being under oath.

Record, pp. 58, 60.

The trustee, Mrs. Z. C. Sedberry, stated under oath, that the bankrupt, prior to bankruptcy, had the right to do as he pleased with all of these assets.

Record, p. 58.

One of the counsel for the bankrupt testifies:

> "I thought *Mr. Sedberry had a vested interest in the farm* from the face of the deed . . . thought, for instance, he had about a one-fifth interest. . . . *I knew he had scheduled no assets.* . . . *I suggested to Judge Eggleston his schedules should be so amended as to show this interest in the farm.* . . . Mr. Stokes started the fight on it and there was no hiding of assets, it was under the deed."

Record, p. 151.

The bankrupt was guilty of fraud in refusing and failing to schedule these assets, the title to which he well knew was in him; and the members of the bankrupt's family, and the bankrupt, were guilty of fraud in their continued effort to conceal these un-

scheduled assets which were owned by the bankrupt, and which should have been scheduled and turned over to the Trustee in Bankruptcy.

CHANCERY COURT CASE A VICTORY FOR TRUSTEE.

The adjudication of the Chancellor at Franklin, upon the facts, was that J. H. Sedberry was the owner and had always been the owner since January 1, 1902, or down to the date of his adjudication, of the assets of this estate. Counsel for bankrupt testify Trustee won the allegations of his bill in toto.

Record, pp. 143, 152.

The fraud of the bankrupt lies in seeking to go into bankruptcy and use the Bankrupt Court as a cloak or guise for his fraud, and in failing and refusing to schedule his assets, and continuing, with the aid of his family, to conceal them from the Trustee in Bankruptcy, well knowing that he was the owner of such assets and should have scheduled them.

FINDINGS OF THE REFEREE.

The Referee found as follows:

1. That the contract between the Trustee and petitioner Stokes, was unlawful and unauthorized.

2. The contract was not champertous and void.

3. That petitioner Stokes, on a *quantum meruit*, was entitled to a fee of $10,000.

4. That petitioner Stokes was entitled to expenses to the amount of $750.00.

Petitioners filed a petition to have this order reviewed by the District Judge.

Record, p. 185.

Later, respondents filed a petition to review this order.

Record, p. 188.

FINDINGS AND JUDGMENT OF DISTRICT JUDGE.

The District Judge, upon the respective petitions to review, held as follows:

1. That under the Tennessee Statutes, Shannon's Code, Secs. 6097-6099, applicable to fraudulent conveyances, that only the amount of a creditor's debt could be recovered, and no attorney's fees.

2. That the suit by the trustee under which the assets of this estate were secured, *was not brought under the Tennessee Statutes, Shannon's Code, Secs.* 6097-6099, but was prosecuted under the provisions of Sec. 70 of the Bankruptcy Act, particularly sub-section 4, and subsection 5 thereof, holding that *the trustee is vested with the title to the entire property*, and

that the entire property must come into the Bankrupt Court for distribution.

3. That counsel fees being a part of the trustee's expenses to be paid out of the estate, are entitled to preferential payment as a part of the costs of administration.

4. That such attorney's fees for the trustee's counsel are to be paid as a part of the costs of administration before the surplus is returned to the bankrupt and his family, and shall be paid out of such surplus.

5. That the contract between petitioner Stokes and the trustee, providing for attorney's fees upon a contingent basis, was unauthorized and void, because the bankrupt's wife and children were not then parties to the bankruptcy cause; and such approval of the Referee of the contract, was made without notice to the bankrupt or the members of his family; and that no petition to review this order within the time provided by law, had to be filed by the bankrupt and the members of his family.

6. That it was unnecessary to determine the question as to whether the contract was champertous, but that, regardless of this question, highly beneficial services were performed by the attorney for the trustee, in reliance upon the legality of his contract; and that while the contract was unauthorized and void, the attorney for the trustee is entitled to a reasonable fee upon a *quantum meruit*, for services rendered, and that such fee should be allowed under the petition filed by the bankrupt and his family.

7. That the fee of the attorney for the trustee, upon a *quantum meruit, is to be determined by the benefit to the creditors alone, and limited to the amount realized for creditors;* and that the claim of Ferry & Co. should not be consid-

ered as one of the creditors; and such fee should be fixed on a basis of $21,000 of creditors. That the litigation in the Chancery Court was ably and diligently and efficiently conducted, and that upon a *quantum meruit* on a basis of $21,000 of creditors, a fee of $7,500.00 would be reasonable compensation for the attorney for the trustee.

8. The Court allowed the attorney for the trustee $750.00 for expenses.

Record, pp. 192-207.

From the action of the District Judge, appeals and petitions to revise were perfected by petitioners, and later by respondents, removing the cause from the U. S. District Court, to the Circuit Court of Appeals for the Sixth Circuit.

Record, pp. 228, 229, 238, 246, 247, 249, 250-260.

VIEWS OF THE CIRCUIT COURT OF APPEALS.

The Circuit Court of Appeals held as follows:

1. That the bankrupt caused the title to a farm and personal property to be conveyed *to his wife.*

2. The trustee entered into a contract with petitioner Stokes to recover the property, and that petitioner Stokes, in the name of the trustee, filed a bill in the Chancery Court, alleging that the conveyance *to Mrs. Sedberry was in fraud of creditors, and obtained a decree accordingly.*

3. Both appeals were dismissed, and the causes heard upon the petitions to revise.

4. That it was unnecessary to decide whether the contract between petitioner Stokes and the trustee, was champertous.

5. The contract between petitioner Stokes and the trustee was invalid on account of there being no notice to the bankrupt and his family.

6. Petitioner Stokes was entitled to recover upon a *quantum meruit*, even if the contract was champertous.

7. That whether the fee should be charged against the fund devoted to pay creditors, or should be added to that fund and charged against the surplus, is a question of difficulty, and often may be of importance.

8. That under the Tennessee law, the extent of a creditor's right and remedy is to recover the amount of his debt, and that he cannot recover counsel fees, under Shannon's Code, Secs. 6097-6099.

9. That the property in the hands of the trustee, was recovered under Section 70e, by virtue of Tennessee Statutes, Secs. 6097-6099, and not under Section 70a, the provisions of Section 70a, applying alone to conveyances made within four months of bankruptcy.

10. That the attorney's fees to be paid petitioner Stokes, must be paid by the creditors, and they receive pro rata distribution, and not paid out of the surplus.

11. The order of the District Judge is accordingly modified, and the case remanded for that purpose.

The opinion and judgment or decree of the Circuit Court of Appeals was filed and entered on October 14, 1921, and stay of mandate to December 17, 1921, granted.

Record, pp. 271-278.

SPECIFICATIONS OF ERROR.

I.

Petitioners respectfully insist that the Circuit Court of Appeals is in error in holding that, although the Truste has the title to a large amount of assets, belonging to the fraudulent bankrupt, in excess of the amount necessary to pay creditors, that *the creditors must pay attorney's fees and costs and expenses, and receive a small pro rata payment of their claims.* We insist creditors entitled to be paid their claims in full, with interest, and that surplus is chargeable with attorney's fees, costs and expenses.

II.

Petitioners respectfully insist that the Circuit Court of Appeals is in error in holding that "the bankrupt caused the title to a farm and personal property to be conveyed to his wife." There was no conveyance to the bankrupt's wife, but to a naked trustee, who held for the bankrupt, as adjudged by the Chancery Court, and such adjudication is final and conclusive. Record p. 64

III.

Petitioners respectfully insist that the Circuit Court of Appeals is in error in holding that the title to assets of this estate was vested in the Trus-

tee, by Section 70e of the Bankruptcy Act (that is, that the Trustee recovered in the right of a creditor, under Shannon's Code of Tennessee, Secs. 6097-6099). The proceedings in the Chancery Court of Williamson County, Tennessee, under which the Trustee takes title to all of the assets, is not susceptible to this construction, because:

(a) The Bill filed by the Trustee in the Chancery Court of Williamson County, Tennessee, under which title was vested in him, was *not to set aside a fraudulent conveyance, or any conveyance*, but to cnostrue a deed and determine as a matter of fact, upon proof, the owner and holder of the real title, and to remove all claims of any parties under the deed, as a cloud upon the Trustee's record title.

The Original Bill charges that the bankrupt was in fact the real owner, and was, and had been concealing his assets in the name of a naked trustee.

The prayer of the Bill is not to set aside a fraudulent conveyance, but that the real title to these assets be decreed to have been in the bankrupt up to bankruptcy, and in the Trustee in bankruptcy after adjudication.

The decree is responsive to the prayer of the Original Bill.

The decree would be void as not responsive to the allegations and prayer of the Bill, under the construction placed upon it by the Circuit Court of Appeals; that is, that it was rendered under the Tennessee Statutes with reference to fraudulent conveyances (Shannon's Code, Secs. 6097-6099), which sections provide the right a creditor has in Tennessee, through Section 70e of the Bankruptcy Act.

(b) The deed to a naked trustee was executed and recorded more than fifteen (15) years before bankruptcy, and suit could not have been maintained to set it aside as a fraudulent conveyance, because the seven years' adverse possession statutes of Tennessee would have barred the right of a creditor to proceed under Shannon's Code of Tennessee, Secs. 6097-6099.

(c) Title to the assets of this estate was vested in the Trustee in bankruptcy, in the proceedings in the Chancery Court of Williamson County, Tennessee, because:

(1) The trust sought to be created was a dry or passive trust, and the title to the assets, under the law of Tennessee, vests in the real beneficiary, in this case J. H. Sedberry, the bankrupt.

(2) The trust sought to be created, was created by the bankrupt for his own benefit, and a party cannot create a spendthrift trust for his own benefit, and the real title is vested in him, under the law of Tennessee.

IV.

Petitioners respectfully insist that the Circuit Court of Appeals is in error in not holding that the title to the assets of this estate was vested in the Trustee in Bankruptcy, under the Bankruptcy Act, Sec. 70a5.

The title to the assets in this case, was vested in the Trustee in Bankruptcy in the proceedings in the Chancery Court of Williamson County, Tennessee, under Sec. 70a5 alone, and the decree is not susceptible to any other construction, because:

(a) The assets could by some means have been transferred by the bankrupt.

(b) The property might have been levied upon and sold under judicial process agalnst the bankrupt.

(c) There is nothing in the Bill or decree in the Chancery Court suit, under which title to these assets could possibly be vested, under Sec. 70e.

V.

Petitioners respectfully insist that the Circuit Court of Appeals is in error in holding the contract between petitioner Stokes and the Trustee in Bankruptcy invalid on account of there being no notice to the bankrupt and the members of his family.

VI.

Petitioners respectfully insist that the Circuit Court of Appeals is in error in holding that the amount of petitioner Stokes' fee must be based upon the amount due creditors.

VII.

Petitioners respectfully insist that the Circuit Court of Appeals is in error in not holding that the amount of petitioner Stokes' fee must be based upon the entire assets, title to which was vested in the Trustee.

VIII.

Petitioners respectfully insist that the Circuit Court of Appeals is in error in not allowing the expense account of petitioner Stokes, in the sum of $1,127.28.

IX.

Petitioners respectfully insist that the Circuit Court of Appeals is in error in dismissing petitioners' appeal from the action of the District Judge, as appeal is the proper procedure to test the validity of the contract between petitioner Stokes and the Trustee in Bankruptcy.

PROPRIETY OF CERTIORARI

We respectfully insist that the final determination of the questions presented is essential to a uniform construction of the Bankruptcy Act throughout the United States, to the end that it may be determined finally:

1. What title and what assets a Trustee in bankruptcy takes where assets are not scheduled, and fraudulently concealed, and there is a large surplus, as in the instant case.

2. What powers and authority the Trustee in bankruptcy has, with the approval of the Referee, to enter into a contract upon a contingent basis with counsel, for the recovery of assets, especially in cases

where no assets are scheduled, and attorney's services can only be had upon a contingent basis.

3. What sum or amount shall constitute the basis upon which attorney's fees shall be allowed; that is, whether the fees allowed shall be determined by a definite and certain amount; namely, the assets vested in the Trustee, or on an uncertain and fluctuating amount, depending on the amount of the claims, if any, that may be filed by creditors and allowed by the Court.

Your petitioners annex hereto and present herewith, as a part of this petition, a brief and argument, showing more fully their views upon the questions involved, and giving in more amplified form, the reasons why the opinion and decree of the Circuit Court of Appeals was erroneous and should be reversed, and respectfully ask that said brief and argument be considered in connection with, and as a part of this petition, for the purpose of testing the correctness of the rulings of the said Circuit Court of Appeals.

A certified copy of the entire record in said cause in said Circuit Court of Appeals, is hereby furnished, attached to, and made a part of this application, marked Exhibit "A," in compliance with Rule 37 of this Honorable Court.

Your petitioners are advised and believe that the said decree of the U. S. Circuit Court of Appeals, is

erroneous, and that this Honorable Court should require this cause to be certified to it for its review and determination, in conformity with the provisions in Section 240 of the Judicial Code, and the Act of January 28, 1915, 38 Stat. L. 83, 1 Ann. Stat. 2nd Ed. 833, said cause being made final in said Circuit Court of Appeals, by the provision in the Act of January 28, 1915, 38 Stat. L. 83, 1 Ann. Stat. 2nd Ed. 833.

WHEREFORE, YOUR PETITIONERS RESPECTFULLY PRAY:

That a writ of certiorari may issue out of, and under the seal of this Court, directed to the U. S. Circuit Court of Appeals for the Sixth Circuit, commanding said Court to certify and send to this Court on a day certain, to be therein designated, a full and complete transcript of the record and all proceedings in the said Circuit Court of Appeals, in the said causes entitled in that Court: "Jordan Stokes, Jr., Jos. R. West, R. H. Crockett, Thos. G. Watkins, Trustee, vs. J. H. Sedberry, Bankrupt, Z. C. Sedberry, M. H. Sedberry, J. B. Sedberry, Catherine Sedberry Overall, and Falley Overall; and, J. H. Sedberry, Bankrupt, Z. C. Sedberry, W. H. Sedberry, J. B. Sedberry, Catherine Sedberry Overall, and Falley Overall, vs. Thos. G. Watkins, Trustee, Jordan Stokes, Jr., Jos. R. West, R. H. Crockett, on appeal and petitions

to revise, by both parties, from the U. S. District Court for the Nashville Division of the Middle District of Tennessee, Nos. 3503 and 3504," to the end that the said causes be reviewed and determined by this Court, as provided by Sec. 240, Judicial Code, and the Act of January 28, 1915, 38 Stat. L. 83, 1 Ann. Stat. 2nd Ed. 833, and that your petitioners may have such other and further relief or remedy in the premises as this Court may deem proper and in conformity with said provisions; and that the said decree of the said Circuit Court of Appeals in said causes be reversed in accord with the Specifications of Error hereinbefore set out in this petition, and the opinion and judgment, or decree of the Circuit Court of Appeals, in said cases, be reversed and modified as follows:

1. That the title to the assets of this estate was vested in the petitioner Watkins, Trustee in Bankruptcy, under Sec. 70a5 of the Bankruptcy Act, as adjudicated by the Chancery Court, under the local law as to title, and is *res adjudicata* and cannot be questioned in these proceedings.

2. That petitioner Watkins, Trustee in Bankruptcy, was vested with the title to all of the assets of this estate, and it was his duty to recover all of these assets.

3. That the contract between petitioner Stokes and petitioner Watkins, Trustee, approved by the Referee, is a valid and binding contract.

4. That if the Court should for any reason hold the contract between petitioner Stokes and petitioner Watkins, Trustee, invalid, that petitioner Stokes is entitled to a fee upon a *quantum meruit* based upon the entire amount of assets, title to which was vested in the Trustee in Bankruptcy.

5. That attorney's fees in bankruptcy are based upon the amount of the estate and not upon an uncertain or fluctuating amount, depending on the amount of claims of creditors filed and allowed.

6. That the appeal prosecuted by petitioner Stokes, from the judgment of the District Judge, was improperly dismissed by the Circuit Court of Appeals, and is the proper procedure to test the validity of the contract between petitioner Stokes and petitioner Watkins, Trustee.

7. That the expense account of petitioner Stokes, attorney for petitioner Watkins, Trustee, is not required to be itemized and verified in accord with the Bankruptcy Act with reference to expense accounts of officers, incurred in the mere administration of estates, and not in litigation; and that the decree of the Circuit Court of Appeals be modified, and peti-

tioner Stokes allowed his expense account to the amount of $1,127.28.

THOS. G. WATKINS, *Trustee;*
JORDAN STOKES, JR.,
JOSEPH R. WEST,
R. H. CROCKETT,
Petitioners.

By----------

Counsel.

Of Counsel:

Jordan Stokes, Jr., being duly sworn according to law, on his oath, says:

I am one of the petitioners, and of counsel for the Trustee, and other petitioners herein.

I prepared the foregoing petition. The statements therein are true of my own knowledge and belief, and I verily believe the case is one in which the prayer in the petition should be granted by this Honorable Court.

Sworn to and subscribed before me, by Jordan Stokes, Jr., this ____ day of December, 1921.

I certify that in my opinion a determination of the questions presented in the foregoing petition for certiorari and supersedeas is essential to a uniform construction of the Bankruptcy Act throughout the United States.

BRIEF.

The opinion and judgment or decree of the Circuit Court of Appeals, renders it necessary to determine at the outset, under what section of the Bankruptcy Act, the Trustee in Bankruptcy became vested with the title to the assets of this estate, the Trustee in Bankruptcy now holding the title and possession of all of the assets.

Section 70e of the Bankruptcy Act Not Applicable.

The Circuit Court of Appeals held that petitioner Watkins, Trustee, recovered the assets of this estate under Section 70e of the Bankruptcy Act.

Section 70e of the Bankruptcy Act is as follows:

> "The Trustee may avoid any transfer by the bankrupt of his property, which any creditor of such bankrupt might have avoided," etc.
>
> Sec. 70e, Bankrupty Act, 1898.

The Circuit Court of Appeals held that the Trustee set aside a conveyance under the right given him to sue in the right of a creditor, under the foregoing section. The right of a creditor to set aside a fraudulent conveyance, in Tennessee, is no more nor less than the right given by Shannon's Code of Tennessee, Sections 6097-6099.

The Circuit Court of Appeals held that this right, viz., the right of a creditor to sue under Sections 6079-6099 of Shannon's Code of Tennessee, was preserved to the Trustee, by Section 70e of the Bankruptcy Act above quoted.

A Creditor Could Not Have Maintained Suit to Set Aside This Conveyance.

The conveyance from W. J. Zellner and wife, to Z. C. Sedberry, Trustee, was executed and recorded more than fifteen (15) years before the voluntary petition in bankruptcy of Sedberry was filed.

Record, pp. 31-33.

The Seven Years' Adverse Possession Statutes of Tennessee operate as a bar of the right, as well as the remedy ,and in effect establish title to property.

Shannon's Code of Tennessee, Sections 4456-4457.

The deed in question having been executed and recorded more than twice the number of years required by the adverse possession statutes of Tennessee, these statutes operate as an absolute bar to the right of any creditor, or any other party, to set aside this deed for any reason.

The Supreme Court of Tennessee, in construing the adverse possession statutes (Shannon's Code,

Sections 4456-4457), have held that, however fraudulent, or however slight the color of title, so long as it is registered and purports to convey title, *even though the deed be forged,* the seven years' adverse possession statutes for the quieting of title, apply and operate as a bar against any one seeking to set aside such conveyance.

Iron & Coal Co. v. Schwoon, 124 Tenn. (16 Cates) 176.

The seven years' adverse possession statutes of Tennessee, operate to bar the right as well as the remedy, and to establish title, and *do not even have to be pleaded.*

Jones, et al, v. Coal Creek Mining & Mfg. Co., 133 Tenn. (6 Thomp.) 159.
Iron & Coal Co. v. Schwoon, 124 Tenn. (16 Cates) 176.

The seven years' adverse possession statutes bar the rights of the Trustee, given under Section 70e of the Bankruptcy Act.

The Original Bill filed by petitioner Watkins, Trustee, under which title to these assets was vested in him, *was not filed in the right of a creditor, but in the right of the owner and holder of the legal title and right to possession of these assets, he being Trustee of the Bankrupt in whom the title rested, up to adjudication in bankruptcy.*

The allegations of the Original Bill filed by Watkins, Trustee, under which title to these assets was vested in him, are not seeking to set aside any conveyance, but to establish his title as the successor, by operation of law, to the bankrupt.

Record, pp. 16-29.

The allegations with regard to the motive or intent of the bankrupt in having the conveyance made to a naked trustee, are corroborative of the fraud of the bankrupt in refusing and failing to schedule these assets, and in fraudulently concealing them while being the absolute owner of them.

Record, pp. 16-29.

There is no prayer in the bill asking that this conveyance be set aside. On the contrary, the prayer of the bill is, that petitioner Watkins, Trustee, be decreed to be *the owner and holder of the real title to all of these assets.*

Record, pp. 27-29.

A decree rendered, setting aside this conveyance except as a cloud upon petitioner Watkins, Trustee's record title, would not be responsive to the allegations and prayer of the Original Bill, and would be coram non judice and void, because the necessary allegations with regard to the amount owing to creditors, or nature and character of their debts, and a

decree fixing the amount of their debts, are not made in the bill, or decreed by the court. There were no allegations as to any amount of creditors, or any claims whatsoever in so far as creditors are concerned, in the Original Bill, or in any of the pleadings in the Chancery Court cause.

The Circuit Court of Appeals held:

> "In the instant case, the State Court could award a lien or recovery of only $21,500."

Had the Chancellor, in the State Court proceedings, rendered a decree awarding such a recovery, it would have been coram non judice and void, under the bill as filed by petitioner Watkins, Trustee.

The Trustee in the State Court proceedings did not sue in the right of any creditor or creditors, but in his own right, as *the owner and holder of the title to all of these assets, and had he sued in the right of a creditor or creditors, the seven years' adverse possession statutes above referred to, would have been a complete bar to any right that he might have asserted.*

Cases cited supra.

The only right that a creditor had in Tennessee against these assets was alone *to have subjected them by execution and sale, as the assets of J. H. Sedberry.* This is true, however fraudulent the conveyance from Zellner to the trustee, may have been.

Cases cited supra.

Section 70a5 of the Bankruptcy Act Applicable.

Section 70a5 of the Bankruptcy Act stripped of its unnecessary verbage, is as follows:

> "The Trustee of the estate of a bankrupt, upon his appointment and qualification . . . shall in turn be vested, by operation of law, with the title of the bankrupt as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempt, to all . . . (5) property which prior to the filing of the petition, he could by any means have transferred, or which might have been levied upon and sold under judicial process against him."
>
> Section 70a5, Bankruptcy Act, 1898.

The word "or" as used in this section, is disjunctive, and the title to property which the bankrupt could by any means have transferred, passes to his trustee, whether it could have been levied upon and sold under judicial process or not. And likewise title to property which could have been levied upon and sold under judicial process, passes to the trustee, whether it could by any means have been transferred by the bankrupt, or not.

Page v. Edmunds (1903) 187 U. S. 596, 23 Sup. Ct. 200, 47 U. S. (L. Ed.) 318.

Fisher v. Cushman, (C. C. A. 1st Cir. 1900), 103 Fed. 860, 4 A. B. R. 654.

Section 70a5 of the Bankruptcy Act is the most comprehensive of all sections with reference to prop-

erty coming into the hands of the Trustee in Bankruptcy.

1 Fed. Stat. Ann. (2 Ed.) 1171.
In Re: Barrow, (W. D. Va. 1899), 98 Fed. 582, 3 A. B. R. 414.

Could the Bankrupt by Any Means Have Transferred This Property?

Prior to bankruptcy, the bankrupt could have transferred this property and his grantee obtain a good title, upon two grounds:

I.

Zellner Deed a Dry or Passive Trust.

The trust sought to be created by the deed from Zellner to the trustee, was a dry or passive trust. The trustee under this deed acted as trustee for the bankrupt alone, who was the real beneficiary. By the terms of the deed, the property could be conveyed by the bankrupt joining his trustee in the conveyance. *It is well settled in Tennessee, that the title to property, in the case of a dry or passive trust, vests absolutely in the beneficiary; in this case, the bankrupt, J. H. Sedberry.*

Hooberry v. Harding, 78 Tenn. (10 Lea) 392.
Turley v. Massengill, 75 Tenn. (7 Lea) 353.
Jourolmon v. Massengill, 86 Tenn. 81, 5 S. W. 719.
Hughes v. Farmers Savings, etc., Assn., (Tenn. Chy. App.) 46 S. W. 362.

If J. H. Sedberry had executed deed in his own name, without the joinder of any one, his grantee could have maintained a bill, identical with the relief sought in the bill filed by petitioner Watkins, Trustee, under which title was vested in this case. And under such a bill, the grantee in a deed signed by the bankrupt, J. H. Sedberry alone, would have been vested with the absolute title to all of this property.

Cases cited supra.

In so far as the personal property and growing crops upon the farm are concerned, the bankrupt for years, transferred and dealt with said property in his own name, without the joinder of any one.

Record, p. 57.

The farm and personal property, title to which was vested in the Trustee, in the Chancery Court case, *could have been transferred by the bankruptcy prior to bankruptcy.*

II.

Zellner Deed Attempted to Create Spendthrift Trust.

The Zellner deed was procured by the bankrupt to be made to a trustee, the bankrupt furnishing the consideration. The real and sole beneficiary under

this deed, as shown by the proof in the Chancery Court cause, was the bankrupt, J. H. Sedberry. It is well settled in Tennessee, that a party cannot create a spendthrift trust for his, the creator's benefit, and the title remains or vests in the beneficiary; in this instance, J. H. Sedberry, the bankrupt.

Bank v. Watkins, 126 Tenn. 453.
Menken v. Brinkley, 94 Tenn. 721.

The bankrupt had such a title under this attempted spendthrift trust, that he could by deed, prior to bankruptcy, have conveyed it, and a bill could have been maintained by his grantee, similar to the bill filed by petitioner Watkins, Trustee, in the Chancery Court, and title would have been vested in such grantee.

Cases cited supra.

Property Could Have Been Levied Upon and Sold Under Judicial Process.

The bankrupt, prior to bankruptcy, procured the conveyance to be made from Zellner to the trustee, and furnished the consideration, thereby creating a resulting trust, and this property could have been levied upon as the property of the bankrupt and sold under judicial process, in the State of Tennessee.

Russell v. Stinson, 4 Tenn. (3 Haywood) 1.
Smithall v. Gray, 20 Tenn. (1 Humph.) 496.
Butler v. Rutledge, 42 Tenn. (2 Cold.) 12.

State Law Governs.

The law of the State wherein the property is located governs, under Sec. 70a5 of the Bankruptcy Act; that is, it must be determined by the local law whether prior to bankruptcy the property could (1) by any means have been transferred by the bankrupt, or (2) have been levied upon and sold under judicial process.

In Re: Shenberger, (N. D. Ohio 1900), 102 Fed. 978, 4 A. B. R. 487.
Fisher v. Cushman, (C. C. A. 1st Cir. 1900), 103 Fed. 860, 4 A. B. R. 654.
Forestner v. Citizens Sav. Bk. & Tr. Co., (C. C. A. 6th Cir. 1911), 186 Fed. 1.
In Re: Butterwick, (N. D. Pa. 1904), 131 Fed. 371, 12 A. B. R. 536.
In Re: Waite-Robbins Motor Co., (D. C. Mass. 1911), 192 Fed. 47.

Under the Tennessee authorities cited supra, the assets of this estate were property which, prior to bankruptcy, could have been transferred by the bankrupt; and also, been levied upon and sold under judicial process.

The Original Bill under which title to these assets was vested in petitioner Watkins, Trustee, in the Chancery Court of Williamson County, Tennessee, is upon the theory alone that this was property of the bankrupt which could have been transferred

by him, or could have been levied upon and sold under judicial process, and which the bankrupt had fraudulently failed and refused to schedule and with the aid of his family, was concealing from petitioner Watkins, the Trustee.

Record, pp. 16-29.

The proof in the Chancery Court case abundantly sustained these allegations, and as testified to by counsel for the bankrupt, the Chancellor sustained the allegations of the bill in toto.

Record, pp. 55-61, 143, 152.

Decree of the Chancery Court.

The Chancellor decreed *that the bankrupt, J. H. Sedberry, was the owner of the real title to all of these assets and had been from the date of the Zellner deed, January* 1, 1902, *up to the date of his adjudication in bankruptcy.*

Record, pp. 64-65.

All necessary parties were before the Chancery Court and the Chancery Court had complete jurisdiction to determine the question of fact as to title, and to render the decree. This adjudication of the Chancellor—that the bankrupt up to his adjudication in bankruptcy, was the real owner and holder

of the title to these assets—is res adjudicata and cannot be questioned, but is conclusive on this question.

Sec. 1, Art 4, Constitution United States.
Cooper v. Newell (1899) 173 U. S. 567, 19 Sup. Ct. 506, 43 U. S. (L. Ed.) 808.
Kansas City Ft. S. & M. R. Co. v. Morgan (C. C. A. 6th Cir. 1896), 76 Fed. 429.
Union & Planters Bk. vs. Memphis, (C. C. A. 6th Cir. 1901), 111 Fed. 561, 49 C. C. A. 468.

The Circuit Court of Appeals held that this adjudication by the Chancellor involved the construction of a Federal Statute, and that the Federal Court was not bound, but could determine under what section of the Bankruptcy Act the Trustee actually recovered the property, and the extent of his recovery; and accordingly held that title to this property was vested in the right of a creditor to set aside a fraudulent conveyance, under Sec. 70e of the Bankruptcy Act.

The adjudication of the Chancellor at Franklin, Tennessee, that the title to this property was in the bankrupt up to adjudication, is conclusive and cannot be questioned, under the authorities just cited.

The Chancellor at Franklin, Tennessee, in his decree, after adjudicating that the title to this property was and had been in the bankrupt, held:

> "And that upon the adjudication of defendant J. H. Sedberry, and appointment and qualification of his trustee, the complainant in this case,

the title to said property passed to and vested in the complainant, Thos. G. Watkins, Trustee, in Bankruptcy of J. H. Sedberry, by operation of law."

Record, pp. 64, 65.

This portion of the decree at Franklin, does involve a construction of the sections of the Bankruptcy Act. It, however, *in no way affects the conclusiveness of the Chancellor's decision and decree, that the title to this property was in the bankrupt up to adjudication.* The right of the Trustee to assert title and maintain the Chancery Court suit, of necessity, involves a construction of the provisions of the Bankruptcy Act.

The Trustee elected to sue under the powers and by virtue of the title conferred upon him by section 70a5, and not to institute a futile suit in the right of a creditor, to set aside a conveyance, which right had been barred by the seven years' adverse possession statutes, cited supra.

It is only by virtue of the title vested by operation of law in the trustee, under Sec. 70a5, that the Trustee could have maintained this Chancery Court suit, and obtained the adjudication on the question of title to these assets. The trustee could not have been invested with title to this property under Section 70e, as construed by the Circuit Court of Appeals, as applying to conveyances made more than four (4) months prior to bankruptcy. The trustee being

vested with the title to all of this property, took all of this property, and now holds all of this property, under Section 70a5, subject to distribution by the Bankrupt Court; and the question of the amount of creditors has nothing to do with the title the trustee holds to this property.

Trustee Could Have Sold Title of Bankrupt.

The Trustee in Bankruptcy could have sold, without instituting any suit whatsoever, the title the bankrupt, J. H. Sedberry, had to this property. And if he had sold the title of the bankrupt to this property, the purchaser at the sale would have become vested with the title to the property, and could have maintained a suit to remove all clouds from his title, and obtained a decree similar to the decree rendered by the Chancery Court.

Either the Trustee took the title to this property under Section 70a5, and could have transferred it to a purchaser, or he took nothing.

Reasons Certiorari Should Be Granted.

So far as we have been able to find, the Supreme Court of the United States has never passed upon the question of surplus in bankruptcy estates. There is no provision in the bankruptcy law under which this surplus is returned to the bankrupt as a matter

of right, and it should be finally determined, for uniformity of construction, what shall be done with the surplus in bankruptcy cases, both in the case of honest bankrupts and in the case of fraudulent and dishonest bankrupts.

The Circuit Court of Appeals in this case, held as follows:

> "Whether the fee should be charged against the fund devoted to pay the creditors or should be added to that fund and charged against the surplus, is a question of difficulty and often may be of importance."

The District Judge held that the title to the assets passed to the Trustee in Bankruptcy, under Section 70a4 and 5.

Record, p. 195.

The Circuit Court of Appeals held that the title to these assets passed under Section 70e.

Both of these courts were construing the degree of the Chancery Court under which the title to these assets was vested in the Trustee in Bankruptcy. There is great conflict of authority between the various Circuit Courts of Appeal, and also the District Courts, in their determination of the sections of the Bankruptcy Act under which the Trustee takes title to assets. And for the sake of uniformity of construction, this question should be finally determined,

in a case where a fraudulent bankrupt fails and refuses to schedule assets and conceals them from his Trustee.

Under what section of the Bankruptcy Act, the Trustee in this case takes title, is a question *that might be taken from the Supreme Court of the State of Tennessee, to the Supreme Court of the United States, under Section 25b of the Bankruptcy Act.* The determination by the Chancellor that the title to this property up to the date of adjudication, was in the bankrupt is determined in accord with the local law, and the local law alone.

The further determination by the Chancellor, *that the title to this property passed to the Trustee in Bankruptcy* by operation of law (that is, under Sec. 70a5), *involves the construction of a Federal Statute.*

Had the case been appealed from the Chancery Court to the Supreme Court of Tennessee, and the Supreme Court of Tennessee, determined that the Bankrupt, up to adjudication, held title to this property, but refused to vest title in the Trustee, under Sec. 70a5 of the Bankruptcy Act, this question could have been taken from the Supreme Court of Tennessee, to the Supreme Court of the United States, under Sec. 25b of the Bankruptcy Act. If the Supreme Court of Tennessee, on appeal of the Chancery Court case, had affirmed the Chancellor, the bankrupt

could have taken the case to the Supreme Court of the United States, under Sec. 25b of the Bankruptcy Act.

Coder v. Arts, 213 U. S. 223, 53 L. Ed. 772.

In bankruptcy cases where there are no assets scheduled, and no assets or funds in the Trustee's hands with which to defray expenses or employ attorneys, and there are assets which the bankrupt has fraudulently failed and refused to schedule and is concealing such assets, it has not been determined as to what right and power the Trustee in Bankruptcy has to employ counsel ,and upon what basis as to compensation he can employ counsel, especially where he cannot secure the services of counsel except upon a contingent basis. This question has not been finally determined under the present Act, and there is conflict of authorities, and the question should be finally determined for the sake of uniformity of construction.

The basis upon which attorney's fees shall be allowed, that is, whether upon the amount owing to creditors whose claims are filed and allowed, or upon the amount of the assets, is a question of importance, and there is conflict of authority upon this question and for the sake of uniformity of construction this question should be finally determined.

It should also be finally determined whether the creditors must bear the burden of attorney's fees

and expenses in the case of a fraudulent bankrupt who fails and refuses to schedule asests and conceals them ,especially in a case where the Trustee in bankruptcy has, by a State court, been vested with th title to the assets and now has in his hands, a surplus largely in excess of the amount necessary to pay creditors and all the expenses.

For these reasons, among others, the petition for certiorari should be granted in this case.

Appeal from District Court Proper Appellate Procedure to Test Validity of Contract.

Appeals from and petitions to revise the order of the District Judge were perfected by petitioners.

Under petitions to revise, only questions of law can be considered.

> Loveland on Bankruptcy, Vol. 2, Sec. 811, p. 1425, and cases cited.

By appeal, questions of law and fact both can be considered.

> Loveland on Bankruptcy, Vol. 2, Sec. 847, p. 1491, and cases cited.

The validity of the contract is both a question of law and fact. The question of law must be determined first; that is, the authority and power of the trustee, with the approval of the Referee, to con-

tract, and whether as a matter of law the contract is valid and binding. And after determining this question, the question of fact as to whether the compensation provided in the contract is reasonable, must be determined.

Thus the validity of this contract is both a question of law and fact.

Coder v. Arts, 213 U. S. 223, 53 L. Ed. 772.

CONTRACT BETWEEN PETITIONER WATKINS, TRUSTEE, AND PETITIONER STOKES, CANNOT BE QUESTIONED IN THESE PROCEEDINGS.

No one, save the bankrupt and the members of his family, has questioned the contract.

It must betermined, first, what claim or titl,e of any, the bankrupt and the members of his family have to the assets and their standing in Court to make such claim or raise any question.

I.

Bankrupt's Family Have No Interest.

The members of the bankrupt's family who join in the petition questioning the contract were parties to the Chancery Court case at Franklin, Tenn., wherein it was expressly adjudicated *that they had*

no claim, title, right or interest whatsoever in the assets of this estate.

Final decree of the Chancellor at Franklin, Tenn.

Record, pp. 63, 65, 66.

This, then, eliminates every one, except the bankrupt.

II.

Bankrupt Has No Interest.

A bankrupt who fails to schedule assets, even in the absence of fraud in fact, *forfeits all right and title to such unscheduled assets*, and will not be heard by the Court to assert any claim thereto in the Bankrupt Court or in any other Court.

First National Bank of Jacksboro v. Lasater, 196 U. S. 115, 49 L. Ed. 408.
Birkett v. Columbia Bank, 195 U. S. 345, 49 L. Ed. 231.
Patterson v. Boyd (Tenn.), 150 S. W. 424.
Fowler v. Jenks, 11 A. B. R. 255, 90 Minn. 74.
Simpson v. Miller (Calif.), 94 Pac. 252.
In re Lighthall, D. C., N. D. (N. Y.), 221 Fed. 791.
Jones v. Barnes, Sup Ct Miss., 66 So. 212.

A bankrupt, even though assets scheduled, has no right to surplus; merely returned to him because the Court can do nothing else with it.

Johnson v. Norris, 190 Fed. 459.

A bankrupt guilty of fraud in fact forfeits his interest in exempt property.

> "If, on the other hand, the transaction is tainted with purposed fraud, the right of homestead is lost when both husband and wife participate. This forfeiture of the homestead right in cases of actual fraud is said in Gibbs v. Patten, 2 Lea, 180-183, to be a rule founded on ethics, 'in that it visits fraud with severe penalties.'"
>
> *In re Tollett*, 106 Fed., p. 869 of the opinion.

III.

Bankrupt Has No Standing in Court.

Under the above authorities, the bankrupt has no standing in Court with reference to any assets of the estate, and can make no claim of any kind thereto.

The bankrupt has no standing whatsoever in Court with regard to the assets, except to assert his claim to exempt property.

> Pickens v. Roy, 187 U. S. 177, 47 L. Ed. 128.
> Pickens v. Dent, 106 Fed. 656.
> *In re O'Connell*, 98 Fed. 83.
> (In addition, cases hereinbefore cited.)

The Distruct Judge and Court of Appeals held the contract unauthorized as against the bankrupt and his family.

Record, p. 199.

If the bankrupt or his family had appeared and opposed the Referee's granting the order authorizing the Trustee to employ counsel, would the Referee have heard their objections? Under the foregoing authorities he unquestionably would not. They would have been repelled, the order granted and the contract approved. The bankrupt had no right to any of the assets and no right to be heard with regard to any of the assets, or any contract that the Trustee might make, or orders that the Referee should make, except with reference to exempt property. The bankrupt, having no standing in Court, and he having no interest in these assets, would not have been heard to oppose the order and approval of the Referee at the time it was made, and if he could not oppose it at that time, such order and approval must be final.

IV.

Referee's Order and Approval of Contract Final.

No petition having been filed to review *the order of the Referee authorizing and approving the contract*, this *order and approval* of the contract *is final.*

If a petition had been filed, the Referee could not review his own orders.

In re Greek Mfg. Co., 164 Fed. 211.
In re Marks, 171 Fed. 281.

It is now too late to review the decree and order of October 24, 1917. In order to review this order or decree, a petition must have been filed within twenty (20) days from October 24, 1917, to review this particular order, and none was filed.

Rule 45, U. S. District Court.
Record, pp. 8, 9.

No petition to review any order of the Referee was filed until November 18, 1920, a matter of more than three (3) years after the entry of the order and the approval of the contract.

Record, pp. 229, 238.

The Court will not review the order of the Referee authorizing this contract, or the Referee's approval of this contract, because no petition to review this particular order was filed in time, or in fact ever filed.

In re Verdon Cigar Co., 193 Fed. 813.
In re Octave Mining Co., 212 Fed. 451.
In re Isert, 232 Fed. 484.

The order of the Referee and his approval of the contract is not before the Court. There being no petition filed in time to review this particular order, the Court will not review it.

In re Zartman, 242 Fed. 595.
In re Goldman, 241 Fed. 385.

CONTRACT VALID AND BINDING.

There are a number of propositions of law that must be considered in determining the validity or invalidity of the contract.

The foliowing propositions of law are conclusive and sustain its validity.

I.

Trustee Represents All Parties Interested.

Prior to the Amendment of 1910, the Trustee in Bankruptcy merely stood in the shoes of the bankrupt.

Meddaugh v. Wilson, 151 U. S. 333, 38 Law Ed. 183.

In re Blake, C. C. A. 8th Cir., 17 A. B. R. 668, 150 Fed. 279.

In re Great Western Mfg. Co., C. C. A. 8th Cir., 18 A. B. R. 259, 152 Fed. 123.

In re Dunlop, C. C. A. 8th Cir., 19 A. B. R. 361, 156 Fed. 955.

The amendment of 1910 enlarged the title and representative capacity of the Trustee by vesting him with the rights of a judgment creditor holding an execution duly returned unsatisfied.

Bankruptcy Act 1898, Sec. 47a2.

The Trustee in Bankruptcy takes, by operation of law, title to all of the property of the bankrupt which he (the bankrupt) could by any means have transferred; and, therefore, the Trustee represents the bankrupt and all parties interested in the estate.

Meddaugh v. Wilson, 151 U. S. 333, 38 Law Ed. 183.
Birkett v. Columbia Bank, 195 U. S. 345, 49 L. Ed. 231.
Bank v. Lasater, 196 U. S. 115, 49 L. Ed. 408.
Bankruptcy Act, 1898, Sec. 70a5.
Fowler v. Jenks, 11 A. B. R. 255, 90 Minn. 74.
Simpson v. Miller (Calif.), 94 Pac. 252.
In re Engle, 105 Fed. 893.
Patterson v. Boyd (Tenn.), 150 S. W. 424.
In re Lightall (N. Y.), 221 Fed. 791.
Jones v. Barnes (Miss.), 66 So. 212.
Johnson v. Norris, C. C. A. 5th Cir., 190 Fed. 459.
Clay v. Waters, C. C. A. 8th Cir., 178 Fed. 385.
Cole v. The Bank, 163 Fed. 180.
Warren v. U. S., C. C. A. 6th Cir., 199 Fed. 753.

II.

Trustee Takes and Holds Title to Property.

The Trustee in Bankruptcy takes title to all of the property of the bankrupt as one entire trust estate.

Bankruptcy Act 1898, Sec. 70a5.
Meddaugh v. Wilson, 151 U. S. 333, 38 Law Ed. 183.

In re Baber, 119 Fed. 520.
Johnson v. Norris, C. C. A. 8th Cir., 190 Fed. 459.
Clay v. Waters, C. C. A. 8th Cir., 178 Fed. 385.
Bunch v. Smith, 116 Tenn. 201.
Barton v. Geiler, 71 Tenn. 296.

III.

Trustee Must Recover Assets Otherwise Liable.

It is made the duty of the Trustee to collect and reduce to money all of the assets of the bankrupt, including concealed assets, as in this case.

Bankruptcy Act 1898, Sec. 47a2.

If the Trustee neglects to perform this duty and recover these assets, he is personally liable for such failure.

Bankruptcy Act 1898, Sec. 47a2.
In re Reinboth, C. C. A., 157 Fed. 672.
In re Baber, D. C., Tenn., 119 Fed. 520.

IV.

Trustee Auhorized and His Duty to Employ Attorneys.

Not only is the Trustee authorized to employ attorneys to institute all necessary suits, and take all necessary legal steps to recover the assets right-

fully belonging to the bankrupt's estate, but it is made his duty to employ attorneys for this purpose.

In re Arnett, 7 A. B. R. 522, 112 Fed. 770.
In re Baber, D. C., Tenn., 119 Fed. 520, 9 A. B. R. 406.
In re Reinboth, 157 Fed. 672.
In re McKenna, 137 Fed. 611.

V.

Referee Has Jurisdiction and His Duty to Fix Attorney's Fees.

Referees are invested with the jurisdiction and powers of the Judge, for the taking possession of and recovering assets belonging to the bankrupt estate, when causes are referred to them, as in this case.

Bankruptcy Act 1898, Sec. 38.

The rules of the U. S. District Court, wherein the voluntary petition in bankruptcy of this cause was filed, expressly invest the Referee with the jurisdiction of all matters of which the Judge had jurisdiction, in so far as such jurisdiction could be conferred by the rules of said Court.

Record, pp. 8, 9.

The reference in this cause was a general or broad reference in conformity with the rule above referred to.

Record, p. 8.

The Referee being invested, under the Bankruptcy Act, and the order of reference in this cause, and the rules of this Court, with all delegable jurisdiction of the Judge, the Referee acted as a court of original jurisdiction on all matters touching the recovery of assets and the preservation of this estate, among other jurisdictional matters.

Bankruptcy Act 1898, Sec. 38, Subsec. 4.
Collier on Bankruptcy, 12th Ed. 1921, Sec. 36, p. 648, and cases there cited.

A referee is a judicial officer and all his acts are presumed to be legal within the scope of his authority.

Collier on Bankruptcy, 1921 Ed., p. 652.

Referees, under rules of the District courts, similar to the rules of the District Court, hereinbefore referred to, have jurisdiction to grant stays—appoint receivers—issue summary orders to compel restitution of property—authorize trustees to compromise a claim due from the bankrupts—dismiss a petition on which an adjudication has already been had—determine the ownership of property which is in the possession of the bankrupt at time of bankruptcy proceedings and which passes to the trustee —and to determine whether the claim of a third person is adverse or merely colorable.

Collier on Bankruptcy, 1921 Ed., pp. 656, 657.

Mueller v. Nugent, 184 U. S. 1, 46 L. Ed. 405.
In re Logan, 28 A. B. R. 543, 196 Fed. 678.
In the Matter of: Schmidt (C. C. A. 3rd Cir.), 36 A. B. R. 548, 230 Fed. 81[illegible]
Knapp & Spencer Co. v. Drew (C. C. A. 8th Cir.), 20 A. B. R. 355, 100 Fed. 413, and many other cases.

Referees have jurisdiction to grant restraining orders and injunctions, except to stay proceedings of the Court or officers of the United States or of the State. In all other cases they have jurisdiction and power to grant such restraining order and injunction.

Collier on Bankruptcy, 1921 Ed., 552, 553, and cases there cited.

The Referee has jurisdiction to determine all matters in the administration of the estate in the hands of the Trustee with reference to the distribution that the Trustee shall make of such assets. This jurisdiction is expressly conferred by the Act, and has been in the practical administration of the Bankruptcy Law, adhered to, and referees have express jurisdiction in determining all questions of priority among creditors, fixing the amount of compensation of attorneys and any and all other parties having claims or interest against the estate. Receiving reports of the Trustee and approving same, including the approval of the final settlement made by the

Trustee. All of these powers are expressly conferred on the Referee.

Bankruptcy Act 1898, Sec. 62.
Collier on Bankruptcy, 1921 Ed., pp. 931-943, inc.

"Bankruptcy Court as a court of equity is competent to grant final and auxiliary reliefs adapted to the circumstances of any cases, *however peculiar;* and by the Bankruptcy Act it is charged with the duty to devise such orders and judgments as may be necessary for the enforcement thereof. . . . Further, if the Court has such jurisdiction, the *Referee has also.*"

Collier on Bankruptcy, 1921 Ed., 552, 553, and cases there cited.

There is nothing in the Act restricting the time at which the Referee shall fix attorneys' fees, no notice to creditors is required and the Referee having the power and authority to fix such fees, and also the jurisdiction to devise all necessary orders, to effectually carry out the purpose of the Bankruptcy Act in the administration of estates, and it being impossible, under the proof in this case, to have secured attorneys for the Trustee without fixing their compensation in advance, the Referee not only had jurisdiction to authorize and approve the contract, but it was his imperative duty to do so.

VI.

In Fixing Attorneys' Fees No Notice to Creditors or Any One Necessary.

It is immaterial whether notice was given, because all creditors are satisfied, and no creditor has filed any proceedings or in any way questioned this contract. The purpose of notice to the creditors is for their protection, and only a *creditor could take advantage of lack of notice.*

In re Levy & Klauber (C. C. A. 2d Cir.), 142 Fed. 962, 74 C. C. A. 132.

The presumption is that all necessary notices were given. But, as stated, this is a personal right that *could only be raised by a creditor.*

No notice to creditors, or any one, of the fixing of attorney's fees for the Trustee, or the entering into of a contract such as the Referee authorized in this instance, is required. The Act does not specifically require notice to creditors, and notice not necessary.

Collier on Bankruptcy, 1921 Ed., 829.

VII.

Trustee and Referee by Joint Action Authorized to Make Contingent Contract.

The Trustee in Bankruptcy, upon the order of the Court, *in this case the Referee,* is authorized to make

a contingent contract as to fee with attorneys, looking to recovery of assets belonging to the estate.

Maybin v. Raymond, Fed. Cas. 9338.
Yaryan Co. v. Isaac 270 Fed. 710.

VIII.

Bankrupt Estates Are Trust Estates and Administered as Other Trusts.

Bankrupt estates are trust estates and are governed and administered under the same laws as are applicable to all trust estates.

Meddaugh v. Wilson, 151 U. S. 333, 38 Law Ed. 183.
Clay v. Waters, C. C. A. 8th Cir., 178 Fed. 385.
Page v. Rogers, C. C. A. 6th Cir., 149 Fed. 194.

In the administration of trust estates in general, trustees, *even in the absence of a provision in the trust instrument giving authority*, are entitled to be reimbursed all expenses, including all reasonable attorneys' fees.

Read v. Memphis Gas Light Co., 107 Tenn. 437.
Electric Light Co. v. Gas Co., 99 Tenn. 389.

Attorneys fees for services in representing a Trustee in Bankruptcy are a part of the costs and expenses of the administration, and a prior charge upon the bankrupt's estate, and the District Judge so held.

Record, p. 197.

IX.

Attorneys' Contingent Fee Contract Recognized and Enforced in Trust Estates.

The law is well settled that guardians, administrators, and other parties occupying fiduciary positions, unquestionably have the right to enter into contracts with attorneys upon a contingent basis.

Taylor v. Bemiss, 110 U. S. 42, 28 L. Ed. 64.
Peugh v. Porter, 112 U. S. 739, 28 L. Ed. 859.
Ryan v. Philadelphia & Reading Coal & Iron Co. (C. C. N. Y.), 189 Fed. 253.
Appeal of Mumma (Penn.), 18 Atl. 6.
James v. Turner (Tex.), 14 S. W. 574.
Cain v. Warford, *et al.*, 33 Md. 23.

X.

Fifty Per Cent Contingent Contracts Reasonable and Valid.

The Courts have expressly recognized and upheld in many instances, contingent contracts made by fiduciaries, providing for 50% of the recovery to go to the attorney as his fee.

Peugh v. Porter, 112 U. S. 739, 28 L. Ed. 859.
Taylor v. Bemiss, 110 U. S. 42, 28 L. Ed. 64.
Maybin v. Raymond, Fed. Cas. 9338.
Ryan v. Philadelphia & Reading Coal & Iron Co. (C. C. N. Y.), 189 Fed. 253.
Appeal of Mumma, *et al.* (Penn.), 18 Atl. 6.

James v. Turner (Tex.), 14 S. W. 574.
Lipscomb, *et al.*, v. Adams (Mo.), 31 N. E. 747.
Deering v. Shreyer, *et al.* (N. Y.), 64 N. E. 179.
Tull v. Nash, C. C. A. 9th Cir., 141 Fed. 557.
Cain v. Warford, *et al.*, 33 Md. 23.
Moyers v. Memphis, 135 Tenn. 263.

XI.

Contract Relied Upon and Fully Performed and Executed by Stokes—Trustee Does Not Raise Question, on Contrary Insists Contract Be Carried Out—Trustee and Court Have Accepted and Retain Assets Secured by Stokes Under Contract—It Is Too Late to Question Its Validity—It Would Be Highly Inequitable Now to Deny to Stokes the Full Compensation Provided in His Solemn Contract.

Where a party without legal authority to contract does contract, and the other party fully performs and executes the contract, the party without authority cannot accept and retain the fruits and benefits derived from the contract and plead his lack of authority to contract.

Corporations entering into contracts that are *ultra vires* where the contracts are fully performed by the other party and the other party relied upon such contracts and the corporation received and retains the fruits and benefits from such contract, such corporation will not be heard to interpose its ina-

bility to make the contract on the ground that it is *ultra vires;* but if it retains the benefits, must pay the contract price.

Williston on Contracts, 1920 Ed., Vol. 1, Sec. 271.

An infant, minor, or other party without authority to contract, cannot retain and keep the fruits and benefits of a contract and decline to carry out and pay the other party to the contract, but the Court will carry out the contract or order restitution.

Williston on Contracts, 1920 Ed., Vol. 1, Secs. 236, 237, 238, and cases there cited.
Taylor v. Bemiss, 110 U. S. 42, 28 L. Ed. 64.

The bankrupt is not a party to this contract. The lack of authority to contract can only be raised by parties to the contract.

Black on Rescission and Cancellation, Vol. 2, Secs. 549, 557.

XII.

Entire Assets Recovered Constitutes Bankrupt Estate in Fixing Stokes' Compensation.

By the express provisions of the Bankruptcy Act, the Trustee is vested with the title of the bankrupt to all property of the bankrupt, and it is made his

positive duty to recover and take possession and reduce to cash, all of the bankrupt's property.

Bankruptcy Act 1898, Sec. 70a5.
Collier on Bankruptcy, 1921 Ed., pp. 544, 547, 548, 1112.

It is not a single interest that is intrusted to the Trustee, but he represents all interests or parties having claims, including creditors, stockholders, and any and all other parties having any rights in and to all of the assets of the bankrupt.

Meddaugh v. Wilson, 151 U. S. 333, 38 Law Ed. 183.

The bankrupt turns over, by and at the time of his adjudication, all rights and claims to any of his assets, and in turn, is relieved of all debts.

In effect, the bankrupt, by the filing of his voluntary petition, shifts all of his burdens on to the law or Bankrupt Court, and is relieved thereof; and at the same time he relinquishes all rights, claims and title that he had in and to any property. The bankrupt is truly *civiliter mortuus* as to his assets.

First National Bank of Jacksboro v. Lasater, 196 U. S. 115, 49 L. Ed. 408.
Bankruptcy Act 1898, Sec. 70a5.
Meddaugh v. Wilson, 151 U. S. 333, 38 Law Ed. 183.
Birkett v. Columbia Bank, 195 U. S. 345, 49 L. Ed. 231.

In re Baber, 119 Fed. 520.
Johnson v. Norris (C. C. A. 8th Cir.), 190 Fed. 459.
Clay v. Waters (C. C. A. 8th Cir.), 178 Fed. 385.
Bunch v. Smith, 116 Tenn. 201.
Barton v. Geiler, 71 Tenn. 296.

It was the duty of the Trustee to recover, not just sufficient to pay creditors, costs and expenses of bankruptcy, but to recover all of the assets of this estate, and the Trustee is, by the express provisions of the Act, and by the construction placed thereon by the Supreme Court of the United States, vested with all right, title and interest in and to all assets.

Bankruptcy Act 1898, Sec. 70a5.
First National Bank of Jacksboro v. Lasater, 196 U. S. 115, 49 L. Ed. 408.
Birkett v. Columbia Bank, 195 U. S. 345, 49 L. Ed. 231.
Meddaugh v. Wilson, 151 U. S. 333, 38 Law Ed. 183.

It being his duty to recover all assets, and title to all assets in contemplation at the time the contract was entered into having, by virtue of the contract, been vested in the trustee, the attorney's fees must be fixed by the terms of the contract with reference to the entire amount, namely, $99,743.01.

Meddaugh v. Wilson, 151 U. S. 333, 38 Law Ed. 183.
Peugh v. Porter, 112 U. S. 739, 28 L. Ed. 859 (and other cases hereinbefore cited).

The assets recovered in this estate were not assets in which there were any adverse interests, such as fraudulent conveyances, *but the assets recovered were prior to adjudication, the property of the bankrupt, and the bankrupt alone, and passed by operation of law to his Trustee in Bankruptcy, upon his adjudication.*

Final decree of the Chancery Court, Record, pp. 64, 65.

And the District Judge so held.

Record, p. 196.

The Trustees' title to this property was just as absolute as though there had been $500,000 due creditors. What is done with these assets is not the question, but the question is: *The Trustee's title and duty to recover all of these assets.*

"He (trustee) takes an *absolute title* which, of course, carries with it the right of possession."

Collier on Bankruptcy, 1921 Ed., p. 1112.

IF FOR ANY CAUSE CONTRACT INVALID ATTORNEYS' FEES ALLOWED ON QUANTUM MERUIT BASED ON ENTIRE ESTATE.

The proof and authorities sustain this proposition, and entitle petitioner Stokes to a fee, in the absence

of a contract, of 50% of the total amount of the estate.

I.

If the Court Holds Contract Invalid Then Recovery Upon a Quantum Meruit.

If the contract is invalid for lack of authority in the Trustee and Referee to enter into it, petitioner Stokes is entitled to recover as upon a *quantum meruit.*

Burns v. City, 142 Tenn., 591-594.

Under the Bankruptcy Law, it is the duty of the Referee to fix fees, and if for any reason the fee cannot be fixed as provided for in the contract under the law, the Referee must fix it without regard to the contract.

Collier on Bankruptcy, 1921 Ed., pp. 935, 936, 941-943.

In addition, the Bankrupt and members of his family in their petition, ask the Referee to fix compensation as provided for under the Act, without regard to the contract.

Record, p. 72.

It was contended by the Bankrupt, and is assigned by him as error, that the contract is champertous and being champertous no recovery can be had on it.

Record, pp. 243, 259.

The contention that the contract is champertous is hereinafter briefed.

II.

50% of the Estate Under the Facts and Law Reasonable Fee Upon a Quantum Meruit.

The overwhelming weight of the evidence shows that, even in the absence of a contract, 50% of the amount of the estate is reasonable, proper, and should be allowed as upon a *quantum meruit*.

> Depositions of Judge Harry A. Luck, Mr. R. T. Smith, Mr. Jordan Stokes, Sr., Mr. R. B. C. Howell, Mr. Walter Stokes, Mr. Frank A. Berry, Judge Jos. C. Higgins, Mr. Jordan Stokes, Jr., Mr. Joseph R. West, Mr. R. H. Crockett, Record, pp. 132-139, 167, 169, 176.

50% contingent contracts have been sustained in the following cases:

> Peugh v. Porter, 112 U. S. 739, 28 L. Ed. 859.
> Taylor v. Bemiss, 110 U. S. 42, 28 L. Ed. 819.
> Maybin v. Raymond, Fed. Cas. 9338.
> Ryan v. Philadelphia & Reading Coal & Iron Co. (C. C. N. Y.), 189 Fed. 253.
> Appeal of Mumma, *et al.* (Penn.), 18 Atl. 6.
> James v. Turner (Tex.), 14 S. W. 574.
> Lipscomb, *et al.*, v. Adams (Mo.), 31 N. E. 747.
> Deering v. Shreyer, *et al.* (N. Y.), 64 N. E. 179.
> Tull v. Nash, C. C. A. 9th Cir., 141 Fed. 557.
> Cain v. Warford, *et al.*, 33 Md. 23.
> Moyers v. Memphis, 135 Tenn. 263.

ATTORNEYS' FEES PAYABLE OUT OF SURPLUS.

The sections of the Act, and authorities hereinbefore cited, abundantly establish that the Trustee represents all parties interested, and takes title to all of the assets of the bankrupt, whether concealed or not.

The assets, the title and right to which had always been in the bankrupt, were hidden out and concealed, as expressly held by the Chancellor.

Final decree of the Chancellor at Franklin, Tennessee, Record, pp. 62-66.

The authorities hereinbefore cited establish beyond question, the duty of the Trustee to recover, not part of the assets, but *all of the assets.*

The employment of Mr. Stokes was to recover, not part of the assets, but *all of the assets.*

Record, pp. 14, 15.

The assets that petitioner Stokes was employed to recover, were all of the assets, and all of the assets contemplated were recovered by him.

Record, pp. 14, 15, 62-68.

The amount due creditors could not be determined. The schedules filed by the bankrupt, if no more true

with reference to his liabilities, than were his schedules of assets, could hardly be looked to for any purpose.

The schedule of liabilities does not preclude an unscheduled creditor from proving his claim. This proposition of law is too well settled to necessitate any authority. In fact, unscheduled claims were filed and have been allowed.

Record, p. 194.

The Trustee first employed petitioner Stokes, more than eleven months before the time for filing claims expired, and the contract was entered into ten months before the time for filing claims against this estate expired.

Record, pp. 14, 15, 79, 82, 104.

What amount of claims might, or might not be filed, at the time of the employment could not be determined.

This is not a case of setting aside a preferential transfer which involves the rights of third parties adversely holding, but as expressly held by the Chancellor, was a case recovering *property belonging to the bankrupt* and concealed by him. Third parties had no interest except as they might participate as agents and conspirators with the bankrupt in effecting the concealment.

The holding of the Circuit Court of Appeals that the recovery is limited to the amount necessary to pay creditors was not raised in the Chancery Court case, and all of the assets, by the Chancellor's decree, were turned over to the Trustee of this estate. Bunch v. Smith, 116 Tenn. (8 Cates) 201.

Record, pp. 62-68.

In the case of preferential transfers it is *malum prohibitum*. In the cases of concealment of property, as in the instant case, it is *malum in se*. In the cases of preferential payments or transfers, under the Act, the recovery is limited. In the case of concealment of property the imperative duty rests upon the Trustee to recover all of the concealed property, because he holds title to such concealed property.

The vesting of assets is *res adjudicata* by decree of the Chancery Court at Franklin, Tennessee.

Final decree of the Chancery Court at Franklin, Tenn., Record, pp. 62-68.

Property concealed by the bankrupt, or assets to which he has title, are all, in their entirety, turned over to the Truste in Bankruptcy.

Bunch v. Smith, 116 Tenn. (8 Cates) 201.
Barton v. Geiler, 71 Tenn. (3 Lea) 296.

It is well settled that bankrupt estates are trust estates, and are administered in the Bankrupt Court upon the same principles as other trust estates, *sub-*

ject to the same charges in the way of expenses and attorney's fees as other trust estates.

In fact, attorney's fees for services rendered the Trustee are part of the expenses and costs of administration and a primary charge upon the entire trust fund.

Meddaugh v. Wilson, 151 U. S. 356, 38 Law Ed. 183.
Clay v. Waters, C. C. A. 8th Cir., 178 Fed. 385.
Page v. Rogers, C. C. A. 6th Cir., 149 Fed. 194.

That all assets of every description, and not the mere amount going to creditors, constitute the estate is settled by the amendatory Act of 1903, which, instead of paying commissions to the Trustee upon sums paid as dividends, now "pays commissions to the Trustee upon all moneys disbursed or turned over to any persons, including lien-holders."

Bankruptcy Act 1898 as amended, Sec. 48.
In re Gramond, 145 Fed. 966.
Johnson v. Norris, C. C. A. 5th Cir., 190 Fed. 459.

THE EXPENSE ACCOUNT OF PETITIONER STOKES, REASONABLE, PROVIDED FOR IN THE CONTRACT, AND SHOULD BE ALLOWED

Petitioner Stokes' expense account amounts to $1,127.28, or less than 1 2-10% of the estate.

The only requirement as to the expense account is, that it shall be reasonable, and for the benefit of the estate.

The expense account of an attorney for the Trustee in recovering assets is not required to be itemized, verified, and to conform to the expense accounts of officers in the administration of bankrupt estates.

Collier on Bankruptcy, 1921 Ed., p. 934.

The expense account consists of moneys actually expended in recovering these assets. The items in the expense account are for stenographic charges, long distance telephone calls, U. S. Marshal's costs, and other incidental expenses rendered necessary in recovering this property.

In a proceeding in the Bankrupt Court proper, that is, in the ordinary administration of bankruptcy proceedings and the distribution thereof, Sec. 62 of the Bankruptcy Act applies, and by the terms of this section, it is confined to the expenses incurred in the administration of estates, and *not in the recovery of estates in independent lawsuits to be afterwards administered.*

There is a distinction between the ordinary expenses in the administration of estates and in the recovery of assets—by the Amendment of 1903, "The reasonable expenses of such recovery"—may

be recoveerd by one or more creditors in case the creditors recover property for the estate.

Bankruptcy Act, Sec. 64b2.

There was another objection raised—the question of stenographic charges—and it was insisted that Sec. 38, sub-sec. 5, of the Bankruptcy Act applied, and that stenographic costs were limited to ten cents per folio.

This provision has no application in this case.

Collier on Bankruptcy, 1921 Ed., 660.

In a case in which twenty cents per folio was charged for testimony taken before a special commissioner at the request of the Receiver, the same objection was made and it was insisted that Section 38, sub-sec. 5, applied. The Court, in holding that this section did not apply, held as follows:

> "But this rate has nothing to do with the employment of a stenographer on isolated and unusual occasions," etc.
> **In re** Stark, 155 Fed. 694.

The expense account is itemized with as much detail as required.

Collier on Bankruptcy, 1921 Ed., 934.

It is abundantly established by the sworn testimony in the case, that the actual expenses in repre-

senting the Trustee and recovering this property, were in excess of the expense account.

Record, pp. 130, 131, 226-228.

That this expenditure was necessary in recovering these assets, is abundantly established by the sworn testimony in the record; and neither the Referee nor the District Judge found to the contrary.

Record, pp. 130, 131, 226-228.

That the expense account is reasonable, is beyond question, especially considering that this litigation extended over two years, was in the Chancery Court of another city from Mr. Stokes' office, that he had to travel backwards and forwards from his home to Franklin, Tenn., and adjacent territory, made innumerable trips which were necessary.

Record, pp. 130, 131, 226-228.

had hotel bills, toll gate fares and other incidental expenses;

Record, pp. 130, 131, 226-228.

that a large amount of transcript of evidence had to be made, depositions had to be taken, copies of many records of public offices made, and stenographic work alone done, in value practically to the entire expense account.

Record, pp. 130, 131, 226-228.

To require an attorney for a Trustee of an estate with no assets, to put down every time he uses a postage stamp, every toll-gate fare, with the date that he paid it, every sheet of paper, or incidental expense that he was put to, would certainly deter any self-respecting lawyer from ever advancing one penny for a Trustee in Bankruptcy.

THE CONTRACT IS NOT CHAMPERTOUS AND VOID.

The bankrupt contends that the contract is champertous and, therefore, void, and that this matter can be considered by the Court without the question being raised in the pleadings.

While the Circuit Court of Appeals did not pass upon the question of champerty, we desire to brief this question before this Court because if this petition should be granted we presume that the bankrupt will make the same contention in this Court.

We will treat the law of champerty and maintenance under the following headings:

I.

Origin and History of Champerty and Maintenance.

II.

Purpose of Champerty and Maintnance.

III.

Old English Law Not Recognized in United States.

IV.

Law of Tennessee Governs Construction of Contract.

V.

Essential Elements of Champerty and Maintenance. Necessary to Avoid a Contract.

VI.

Authority Given to Settle Case Not Against Public Policy or Contrary to Bankruptcy Act.

VII.

Courts and Political Bodies Cannot Be Guilty of Entering into Champertous Contracts—Reason for the Principle of Champerty and Maintenance Does Not Apply.

Taking up these different propositions in their regular order, we will present the authorities under each heading.

I.

ORIGIN AND HISTORY OF CHAMPERTY AND MAINTENANCE.

Champerty and Maintenance laws came into the common law of England when the Norman Conqueror, having subjected the country, and despoiled

the natives of their property, and in order to keep his robber knights in their wrongful possession, brought into the common law the law of champerty and maintenance. Later these laws were adopted and enlarged by the Acts of Parliament.

In 1538, Henry VII suppressed the monasteries in England and proceeded to escheat their estates, and in 1540 he suppressed the order of the Knights of Malta and seized their estates. The English Parliament, thereupon, enacted statutes against champerty and maintenance.

> "These statutes had their foundation in the existence of a class of nobles who, by their great power and influence, were able to overawe the courts and pervert the course of justice. . . . The courts of justice decided that it was unlawful for a master to pay counsel out of his own money, or speak at the bar for his servant. It was even decided to be unlawful for a friend, without compensation, to prosecute the business of a widow in settling her deceased husband's affairs. *And these decisions made no distinction whether the aid was afforded in support of right or justice, or in furtherance of unfounded and vexatious litigation.* . . . Every one who officiously gave evidence was deemed guilty of maintenance, so that he must have had a subpoena or suppressed the truth. That such a doctrine, repugnant to every feeling of the human heart, should be laid aside was to be expected. . . . *In more modern times, the doctrine of maintenance has, even in England, become essentially modified, and adapted to a*

better civilization. In the United States, generally, it is regulated by statute; and where not so regulated, is received with material modifications."

Thornton on Attorneys at Law, Vol. 2, Sec. 383, pp. 57-659.

Mr. Thornton, in support of the foregoing text, cites the following authorities:

Lytle v. State, 17 Ark. 608.
Key v. Vattier, 1 Ohio 132.
Sedgwick v. Stanton, 14 N. Y. 289.
Master v. Miller, 4 T. R. (Eng.) 340.
Newkirk v. Cone, 18 Ill. 449.
Reece v. Kyle, 49 Ohio St. 475, 31 N. E. 747, 16 L. R. A. 723.

II.

PURPOSE OF CHAMPERTY AND MAINTENANCE

Mr. Thornton so well states, in a few words, these purposes, that we quote as follows:

"The general purpose of the laws against champerty, maintenance, and barratry, is to prevent officious intermeddlers from stirring up strife and contention by vexatious or speculative litigation, which would disturb the peace of society, lead to corrupt practices, and pervert the remedial process of the law."

Thornton on Attorneys at Law, Vol. 2, Sec. 384, pp. 659-661.

Huber v. Johnson, 68 Minn., 74, 70 N. W. 806, 64 Am. St. Rep. 456.
Gammons v. Johnson, 76 Minn. 76. 78 N. W. 1035, *distinguishing* Gammons v. Johnson, 69 Minn. 488, 72 N. W. 563.
Dent v. Arthur, 156 Mo. App. 472, 137 S. W. 285.
4 Bl. Com. 135, 136. And see also the argument of counsel in Key v. Vattier, 1 Ohio, 132.
Sherley v. Riggs, 11 Humph. (Tenn.) 53.
Backus v. Byron, 4 Mich. 535.

III.

OLD ENGLISH LAW NOT RECOGNIZED IN THE UNITED STATES.

The old English laws of champerty and maintenance born in iniquity and for the purpose of preserving to those wrongfully in possession, title and possession of property against the rightful owners, as has been hereinbefore shown, have not been followed in the United States; and all of these laws have been very greatly modified, if not expressly repealed, to the end that justice shall prevail.

Thornton on Attorneys at Law, Vol. 2, Sec. 385, pp. 661-664.

United States—

Gregerson v. Imlay, 4 Blatchf. 503, 10 Fed. Cas. No. 5795.
Roberts v. Copper, 20 How. 467, 15 U. S. (L. Ed.) 969.

Peck v. Heurich, 167 U. S. 624, 17 S. Ct. 927, 42 U. S. (L. Ed.) 302.
See Courtright v. Burnes, 13 Fed. 317.
Globe Works v. U. S., 45 Ct. Cl. 497.

Indiana—

Quigley v. Thompson, 53 Ind. 317.

Iowa—

Boardman v. Thompson, 25 Iowa, 487.

Kentucky—

Miles v. Collins, 1 Metc. 308.
Lynn v. Moss, 62 S. W. 712, 23 Ky. L. Rep. 214.
Davis v. Sharron, 15 B. Mon. 64.
Roberts v. Yancey, 94 Ky. 243, 21 S. W. 1047, 42 Am. St. Rep. 357, 15 Ky. L. Rep. 10, 14 Ky. L. Rep. 42.
Wehmhoff v. Rutherford, 98 Ky. 91, 32 S. W. 288.

Louisiana—

Livingston v. Cornell, 2 Mart. (O. S.) 281.
Mazureau v. Morgan, 25 La. Ann. 281.

Missouri—

Breeden v. Frankford Marine Accident, Etc., Ins. Co., 220 Mo. 327, 119 S. W. 576.
Dent v. Arthur, 156 Mo. App. 472, 137 S. W. 285.

Ohio—

Weakly v. Hall, 13 Ohio, 167, 42 Am. Dec. 194.
Reece v. Kyle, 49 Ohio St. 475, 31 N. E. 747, 16 L. R. A. 723.

Virginia—

Roller v. Murray, 107 Va. 527, 59 S. E. 421.

Wisconsin—

Allard v. Lamirande, 29 Wis. 502.
Duke v. Harper, 66 Mo. 51, 27 Am. Rep. 314.

Illinois—

McGoon v. Ankenv, 11 Ill. 558.
Gilbert v. Holmes, 64 Ill. 548.
Thompson v. Reynolds, 73 Ill. 11, *overruling* Newkirk v. Cone, 18 Ill. 449.
Geer v. Frank, 179 Ill. 570, 53 N. E. 965, 45 L. R. A. 110, *affirming* 79 Ill. App. 195.
Dunne v. Herrick, 37 Ill. App. 180.
Newkirk v. Cone, 18 Ill. 449.
Brush v. Carbondale, 229 Ill. 144, 11 Ann. Cas. 121, 82 N. E. 252.

Michigan—

Backus v. Byron, 4 Mich. 535.
Wildey v. Crane, 63 Mich. 720, 30 N. W. 327.
Foley v. Grand Rapids, Etc., R. Co., 157 Mich. 67, 121 N. W. 257, 16 Detroit Leg. N. 246.

Minnesota—

Huber v. Johnson, 68 Minn. 74, 78 N. W. 806.
Gammons v. Johnson, 76 Minn. 76, 78 N. W. 1035.

New Hampshire—

Christie v. Sawyer, 41 N. H. 298.

Oregon—

Dahms v. Sears, 13 Ore. 47, 11 Pac. 891.
Brown v. Bigne, 21 Ore. 260, 28 Pac. 11, 28 Am. St. Rep. 752, 14 L. R. A. 745.

Massachusetts—

Thurston v. Percival, 1 Pick. 417.
Allen v. Hawks, 13 Pick. 79.
Scott v. Harmon, 109 Mass. 237, 12 Am. St. Rep. 685.
Manning v. Sprague, 148 Mass. 18, 18 N. E. 673, 12 Am. St. Rep. 508, 1 L. R. A. 516.

Pennsylvania—

Foster v. Jack, 4 Watts. 334.

Tennessee—

Newman v. Washington, Mart & Y. 79.
Benton v. Henry, 2 Cold. 83.
Sherley v. Riggs, 11 Humph. 53.
Moore v. Campbell Academy, 9 Yerg. 115.

Connecticut—

Richardson v. Rowland, 40 Conn. 565.

Georgia—

Ellis v. Smith, 112 Ga. 480, 37 S. E. 739.

Idaho—

Merchants' Protective Assn. v. Jacobsen, 22 Idaho, 636, 127 Pac. 315.

New Jersey—

Schomp v. Schenck, 40 N. J. L. 195, 29 Am. Rep. 219.

New York—

Sedgwick v. Stanton, 14 N. Y. 289.
Browne v. West, 9 App. Div. 135, 41 N. Y. S. 146.
Zogbaum v. Parker, 66 Barb. 341, *affirmed* 55 N. Y. 120. And see Clark v. Grosh, 81 Misc. 407, 142 N. Y. S. 966.

Texas—

Bentinck v. Franklin, 38 Tex. 458.
Wheeler v. Riviere, 49 S. W. 697.

Washington—

Smits v. Hogan, 35 Wash. 290, 1 Ann. Cas. 297, 77 Pac. 390.

IV.

LAW OF TENNESSEE GOVERNS CONSTRUCTION OF CONTRACT.

Whether a contract is champertous, is governed by the laws of the State in which said contract is to be performed.

Corpus Juris, Vol. 11, p. 272, Citing, The Clara A. McIntyre, 95 Fed. 552; Holladay's case, 37 Fed. 830; Hicocks v. Elliott, 32 Fed. 13.
Gilman v. Jones, 87 Ala. 691, 5 Sol. 785, 4 L. R. A. 113.
Richardson v. Rowland, 40 Conn. 565.
Miles v. Collins (Ky.), 1 Metc. 308.
Thurston v. Percival, 1 Pickering, 415.
Roller v. Murrey, 107 Va. 527, 59 S. E. 421.

In the early settlement of Tennessee, the Legislature enacted champerty and maintenance laws, embodying substantially the common law on champerty and maintenance.

Chapter 66 of the Acts of the General Assembly of Tennessee of 1821.
Code of Tennessee, 1858, Art. 3, Sec. 1776, 1789, inc.

"It was no fear of nobles or great men, or their influence with courts and juries, that produced these Tennessee statutes, for as a fact the courts and juries could be relied on for action against the purchasers of these titles; but it was the *hostility of public sentiment to the 'land*

sharks' who were speculating in litigation over defective titles, and particularly to lawyers lending themselves to this speculation for profit which provoked statutes seeking to enlarge the English acts just because they did not reach the evil sought to be suppressed."

Byrne v. Kansas City, Ft. S. & M. R. Co., 55 Fed., p. 44.

After the rendition of the above cited decision, the Tennessee Legislature, on April 7, 1899, keeping pace with the spirit of the times, and the general trend toward a better civilization, and the foundation of right and justice, repealed the statutes of champerty and maintenance.

Acts of Tennessee, 1899, Ch. 173, *repealing* Secs. 1781-1789, inc., of the Code of 1858.

The Act of 1899 repealing the champerty and maintenance laws of 1821, did not reinstate the common law with regard to champerty and maintenance in Tennessee.

Heaton v. Dennis, 19 Pick. (103 Tenn.) 160.
Sanders v. Riddick, 127 Tenn. 706.
Moyers v. Memphis, 135 Tenn. 263.

"The legislature undertook to embody the law of champerty and maintenance in an Act which it passed in 1821, the same being Chapter 66 of the Acts of that session. This Act was carried into the Code at Secs. 1776-1789 (Shannon's Code, Secs. 3171-3184).

"By Chapter 173 of the Acts of 1899, Secs. 1781-1789 of the Code, inclusive, and Secs. 3176-3184 of Shannon's Code, inclusive, were repealed. *That left in force only that portion of our champerty laws which relates to the effect of a conveyance of land adversely held.*"

Staub v. Coal Co., 140 Tenn. 505.

V.

ESSENTIAL ELEMENTS OF CHAMPERTY AND MAINTENANCE NECESSARY TO AVOID A CONTRACT.

There are three essential elements that under practically all of the authorities, must exist in order to render a contract subject to the charge of champerty. These elements are:

(a) Absence of any other interest in the case on the part of the champertor than that raised from his contract. (In effect: Intermeddling by going out and soliciting business.)

(b) The assumption by the champertor of all expenses in conducting the case without any provision to be reimbursed out of the recovery.

(c) A previous agreement for his remuneration from the proceeds of the suit.

These three elements must appear even in jurisdictions in which the law of champerty and maintenance is in force.

The authorities on this question are presented, even though the law of champerty and maintenance is not in force in Tennessee. It is done for the purpose of showing that this contract is not subject to the charge of being champertous.

Taking up the first element: (a) The absence of any other interest in the case on the part of the champertor than that raised from this contract. (In effect: Intermeddling by going out and soliciting business.)

Petitioner Stokes was sought by the Trustee, and requested to accept employment.

Record, pp. 79, 82, 104.

Petitioner Stokes represented certain large creditors, including the Broadway National Bank, having claims proved against this estate, and was interested in the recovery of all of the assets on behalf of these creditors.

Record, pp. 95, 129.

Any interest in the subject matter of the suit, or even the possibility of an interest, or the honest belief that a party has an interest, exempts the party from the charge of champerty or illegal maintenance.

Tron v. Lewis (Ind.), 66 N. E. 490.
Gilman v. Jones (Ala.), 5 So., 787.
Hotmire v. O'Brien, 44 Ind. App. 694, 90 N. E. 33.
Lewis v. Broun, 36 W. Va. 1, 14 S. E. 444.
Millard v. Richland County, 13 Ill. App. 527.
State v. Ampt, 6 Ohio Dec. (Reprint) 699, 7 Am. L. Rec. 469.
Tillman v. Searcy, 7 Humph. (26 Tenn.), 347.
Anderson v. Anderson (Ga.), 78 S. E. 271.
Mazzini v. Corgiat, 115 Pac. 93.
Bigelow v. Old Dominion (N. J.), 71 Atl. 153.
M. & O. R. R. v. Etheridge, 84 Tenn. 398.
Davis v. Reid, 187 Fed. 158-159 (Aff. by C. C. A., 195 Fed. 80).

Taking up the second element: (b) The assumption by the champertor of all expenses in conducting the case without any provision to be reimbursed out of the recovery.

This element is lacking, in that the contract expressly provides for reimbursement out of the recovery.

Record, p. 15.

It is not maintenance if an attorney expends his own money for his client, to be repaid.

Comyns' Dig. of English Laws, Vol. 5, p. 28.
Weeks on Attorneys at Law (2d Ed.), Sec. 350, p. 719.

It is not illegal, and an attorney is not guilty of champerty and maintenance if he paid the expenses himself, or advanced money for the client, to be repaid out of the recovery.

Peugh v. Porter, 112 U. S. 739, 28 L. Ed. 859.
Taylor v. Bemiss, 110 U. S. 44.
Johnson v. Railroad (Ark.) 214 S. W. 17.
Ransom v. Cutting, 81 N. E. 324, 188 N. Y. 447.
Reed v. Chase (Mass.) 130 N. E. 257.
In re Meadows, 181 Fed. 911.
Northwestern S. S. & Co. v. Cochran, C. C. A. 9th Cir., 191 Fed. 146.
Drieband v. Candler, 131 N. W. 129, 166 Mich. 49.
Shuck v. Pfenninghausen, 101 Mo. App. 697, 74 S. W. 381.
In re Bailey, 151 Fed. 953.
Christie v. Sawyer, 41 N. H. 298.
Jordan v. Gillen, 44 N. H. 424.
Wallace v. St. Paul, etc., R. R. Co., 112 Iowa, 565, 84 N. W. 662.
Smits v. Hogan, 35 Wash. 290, 1 Ann. Cas. 297, 77 Pac. 390.
Reece v. Kyle, 49 Ohio St. 475, 31 N. E. 747, 16 L. R. A. 723.
Potter v. Ajax M. Co., 22 Utah, 273, 61 Pac. 999.
Sherley v. Riggs, 11 Humph. 52.
Tillman v. Searcy, 7 Humph. (26 Tenn.) 347.

99

Taking up the third element: (c) A previous agreement for his remuneration from the proceeds of the suit.

It is well settled that an agreement to pay an attorney a part or percentage of the recovery is not now champertous, by the overwhelming weight of authority. We will not cite cases at length on this, but content ourselves with the following authorities:

Taylor v. Bemiss, 110 U. S. 44, 28 Law Ed. 64.
Peugh v. Porter, 112 U. S. 739, 28 L. Ed. 859.

VI.

AUTHORITY TO SETTLE CASE NOT AGAINST PUBLIC POLICY OR CONTRARY TO BANKRUPTCY ACT.

Giving an attorney the authority to settle and collect in a case, does not avoid his contract.

Syme v. Terry & Trench Co., 110 N. Y. S. 25, 125 App. Div. 610.

Champertous provisions, if clearly severable, may be rejected.

Thornton on Attorneys at Law, Vol. 2, Sec. 394, p. 676.
Nutt v. Knut, 200 U. S. 12, 26 Sup. Ct. 216, 50 L. Ed. 348.

Greenleaf v. Minneapolis, etc., 151 N. W. 897, 3 N. D. 112.
Howard v. Ward, 139 N. W. 771, 31 S. D. 114.

This provision or right was never exercised.

In addition, it in no way prevented the Trustee and Referee from exercising similar rights, and it is not to be presumed that petitioner Stokes would attempt to settle or compromise litigation, except in accordance with the Bankruptcy Law.

VII.

COURTS AND POLITICAL BODIES CANNOT BE GUILTY OF ENTERING INTO CHAMPERTOUS CONTRACTS—REASON FOR CHAMPERTY AND MAINTENANCE DOES NOT APPLY.

Cities, counties, and other political bodies, cannot be guilty of champerty and maintenance.

Davis v. Commonwealth, 41 N. E. 292.

Nor can cities, or other political bodies be guilty of champerty and maintenance even though the attorney pays the expenses and costs.

Williams v. Philadelphia (Pa.), 57 Atl. 578.
Saudek v. Milwaukee Elec. R'y & Lt. Co., 163 Wis. 109, 157 N. W. 579.
Brush v. City of Carbondale (Ill.), 82 N. E. 252.

See, also, the following cases:

Millard v. Richland County, 13 Ill. App. 527.
Thornton on Attorneys at Law, Vol. 2, Sec. 392, pp. 673, 674.
Wylie v. Coxe, 15 How. 415, 14 U. S. (L. Ed.) 753.
Wright v. Tebbitts, 91 U. S. 252, 23 U. S. (L. Ed.) 320.
Stanton v. Embry, 93 U. S. 548, 23 U. S. (L. Ed.) 983. See also, *In re* Paschal, 10 Wall. 483, 19 U. S. (L. Ed.) 992.
McPherson v. Cox, 96 U. S. 417, 24 U. S. (L. Ed.) 751.
Bachman v. Lawson, 109 U. S. 659, 3 S. Ct. 479, 27 U. S. (L. Ed.) 1067.
Taylor v. Bemiss, 110 U. S. 42, 3 S. Ct. 441, 28 U. S. (L. Ed.) 64.
Central R., etc., Co. v. Pettus, 113 U. S. 110, 5 S. Ct. 387, 28 U. S. (L. Ed.) 915.
Mabin v. Raymond, Fed. Cas. 9338.

Contracts sanctioned by Courts, or any acts of Courts, cannot be champertous.

Shannon's Code of Tennessee, Sec. 3174.
Parkes v. Larkin, 1 Overton, (1 Tenn.) 101.
Kelly v. Morgan, 3 Yerg. (11 Tenn.) 441.
Sims v. Cross, 10 Yerg. (18 Tenn.) 462.
Todd v. Cowan, 8 Humph. (27 Tenn.) 514.
McClain v. Early, 4 Baxt. (63 Tenn.) 520.
Moyers v. Memphis, 135 Tenn. 263.

IF CONTRACT CHAMPERTOUS, RECOVERY ON QUANTUM MERUIT.

A champertous contract does not penalize an attorney, and he does not thereby forfeit all right to compensation; and especially would he not forfeit such right in a case like the instant case, where the Trustee and the Court are parties to the contract, and by decree, authorized and approved it. However, even in contracts between individuals which have been declared to be champertous, recovery is allowed to an attorney as upon a *quantum meruit*.

Thornton on Attorneys at Law, Vol. 2, Sec. 394, pp. 675, 676, and cases there cited.

5 R. C. L., "Champerty and Maintenance," Sec. 15, pp. 285, 286.

Brush v. City of Carbondale, 82 N. E. 252.

Bargrover v. Pettigrew, 128 So. 533, 2 L. R. A. (N. S.) 260, and note.

(The authorities cited by Mr. Thornton and in R. C. L., so abundantly sustain this proposition that we will cite no further authorities.

ARGUMENT.

With all due deference, the District Judge and the Circuit Court of Appeals, in construing the issues in the Chancery Court case, and the decree of the Chancellor pronounced thereon, wholly misconceived the issues, and their construction of the decree is erroneous.

OPINION OF DISTRICT JUDGE.

The District Judge held, with regard to the Chancery Court suit, as follows:

> "The suit by the Trustee in Bankruptcy *was not, however, brought under the Tennessee statutes*, but was prosecuted under the provisions of Sec. 70 of the Bankruptcy Act. Sub-sec. a4, provides that the Trustee in Bankruptcy, upon his appointment and qualification, shall be vested by operation of law with the title of the bankrupt as of the date of adjudication, except as to exempt property, 'to all . . . property transferred by him in fraud of his creditors.' And Sub-sec. 5 provided that the trustee may avoid any transfer by the bankrupt of his property which any creditor might have avoided and 'may recover the property . . .'
>
> Clearly under these provisions of the Bankruptcy Act, the trustee, under a bill to set aside a fraudulent conveyance, is not limited, as under the Tennessee statute . . . but is vested with title to the entire property and entitled to recover the entire property or its proceeds

for the purpose of administration in the bankruptcy court, as a general asset of the estate, as any other property of the bankrupt."
Record, pp. 195, 196.

This holding is manifest error.

Under the authorities hereinbefore cited in this brief, *the only right that a creditor has in Tennessee, to set aside a fraudulent conveyance is by virtue of Secs.* 6097-6099 *of Shannon's Code of Tennessee. And the right that a creditor had under these sections in this case was barred by the seven years' adverse possession statutes.* The conveyance could not be set aside and the decree in the Chancery Court did not set it aside.

The Chancery Court case was not based upon Section 70a4 of the Bankruptcy Act, and could not have been successfully prosecuted under this section. *It is only under Section* 70a5 *that the suit could have been prosecuted successfully,* and it was prosecuted under this section; that is, that the bankrupt held the title to this property and was the actual owner thereof, and upon his adjudication in bankruptcy it passed by operation of law to his trustee.

The pleadings and decree in the Chancery Court case are not susceptible to any other construction.

The District Judge erroneously holding that the Chancery Court suit was to set aside a fraudulent

conveyance, held that the amount of attorney's fees must be based upon the amount of creditors. This is manifestly an erroneous holding.

OPINION CIRCUIT COURT OF APPEALS.

The Circuit Court of Appeals held that the Chancery Court suit was prosecuted by the trustee under Sec. 70e of the Bankruptcy Act. The authorities cited in this brief determine beyond question that the Chancery Court suit could not have been prosecuted under Sec. 70e; that is, by virtue of the right or rights of a creditor, *which right in Tennessee is alone to set aside a fraudulent conveyance, under Shannon's Code, Secs.* 6097-6099.

It follows, that the Circuit Court of Appeals having erroneously construed the issues and decree in the Chancery Court case, and held that they involved the setting aside of a fraudulent conveyance, that the holding—that the amount of the recovery is limited to the amount of creditors—must of necessity be erroneous.

If the Chancery Court suit of the Trustee had been instituted under Sec. 70e of the Bankruptcy Act, that is, in the right of a creditor under Shannon's Code of Tennessee, Secs. 6097-6099, then, under the Tennessee law, the amount of the recovery would

have been limited to the amount owing to the creditors shown in the bill and ascertained and fixed by decree of Court. And except in a general creditors' bill, no attorney's fees would have been awarded. However, as heretofore stated, the Chancery Court suit was not to set aside a fraudulent conveyance, but to decree title.

SECTION 70a5 APPLICABLE IN THE CHANCERY COURT CASE.

It is under no provision of the Bankruptcy Act that the suit of the Trustee could have been maintained in the Chancery Court, other than under Sec. 70a5; that is, that the bankrupt prior to his adjudication was really the owner and holder of the title to these assets.

Under the authorities hereinbefore cited in this brief, any other proceeding to subject this property would have been barred, and all right of recovery denied. The Bill was filed upon the theory alone that these assets were prior to adjudication, the property of the bankrupt, and *the decree of the Chancellor is the only decree that could have been rendered for the complainant under the allegations and prayer of the bill.* Any award of a monetary judgment or recovery would have been utterly void, under the authorities we have hereinbefore cited.

The property, title to which was vested in the Trustee in the Chancery Court case, having been the property of the bankrupt up to adjudication, it is not debatable, but that under the authorities hereinbefore cited the trustee took the absolute title upon the adjudication in bankruptcy to all of this property, with all the rights and all privileges pertaining thereto, and with full power to dispose of said property and convey good title. And the question of the amount of creditors can have no bearing whatsoever in this matter, as under the Bankruptcy Law, Sec. 70a5, the trustee was vested with the title to all of these assets, it was made his duty to recover and gain possession of all of the assets, and it was for this purpose that he sought out and employed petitioner Stokes.

BANKRUPT'S WIFE AND FAMILY CANNOT QUESTION CONTRACT.

Under the decree of the Chancellor, *the bankrupt's wife and family never at any time had any interest, title, or right to any of these assets.*

Record, p. 63.

This is an express adjudication by a court of competent jurisdiction with all parties before the Court and all of the parties *sui juris*, and this decree of the Chancellor forms a part of the chain of title to this

real estate, and the adjudication that the wife and family of the bankrupt never at any time had any interest in this property, and the decree removing their purported interest under the Zellner deed, is binding and conclusive.

If the bankrupt's wife and family never had any interest, and the Chancellor's decision is conclusive on this point, then they have no standing in this Court and cannot question the attorney's contingent fee contract.

BANKRUPT CANNOT QUESTION CONTRACT.

Under the authorities we have hereinbefore cited, the bankrupt has no standing in Court with regard to unscheduled assets, or assets concealed by him, and the bankrupt will not be heard on any matters except as to exempt property.

It results, therefore, that no one is before the Court, questioning the contract, and the Trustee is insisting that his solemn contract be carried out. The bankrupt and his family should be repelled from Court on account of their fraud, they knowingly and wilfully refusing to schedule assets, and continuing their concealment of the bankrupt's assets.

First Nat'l Bk. of Jacksboro v. Lasater, 196 U. S. 115, 49 L. Ed. 408.

Birkett v. Columbia Bank, 195 U. S. 345, 49 L. Ed. 231.

The Circuit Court of Appeals holds that there was no notice to the bankrupt or his family before the contingent fee contract was executed.

No creditor is objecting in any way to the carrying out of this contract, and the bankrupt and the members of his family, under the authorities hereinbefore cited, have no standing in Court, no interest in these assets, and, therefore, notice to them was not at all necessary.

It is unnecessary to give notice to any parties in any litigation unless they have some interest; and under the adjudication of the Chancellor, and the authorities hereinbefore cited, the bankrupt and his family had no interest and were entitled to no notice at the time the contingent fee contract was entered into. And we respectfully insist that the Circuit Court of Appeals was in error in declaring this contract invalid for lack of notice.

Under the authorities hereinbefore cited, the Trustee, under Sec. 70a5, is vested with the title to all of the assets and he must recover possession of all of the assets, and is authorized to employ attorneys to vest the title and recover the possession of assets, title to which is vested in him under Sec. 70a5 of the Bankruptcy Act. And it is made his imperative duty to employ attorneys. The Referee

has jurisdiction, and it is his duty to fix attorney's fees, and no notice to creditors, or to any one else is necessary. And as held under the old Act, in the case of Maybin v. Raymond, Fed. Cas. 9338, the Trustee and the Court, by joint action, could make a contingent fee contract. And the Referee in this case being the Court, he and the Trustee were authorized and empowered, and it was their duty to enter into this contract.

Under the authorities hereinbefore cited with reference to trust estates, many decisions are cited sustaining attorney's contingent fee contracts in trust estates; and bankrupt estates are trust estates and administered as other trust estates.

From the authorities cited in this brief, it unquestionably follows that not only did the Trustee, with the approval of the Referee, have the authority to enter into the contingent fee contract, but that they would have been subjected to severe censure, and the Trustee, to possible personal liability, had he not done so.

We respectfully insist that the Circuit Court of Appeals was clearly in error in holding the contingent fee contract invalid, but that said contract is valid and should be sustained.

QUANTUM MERUIT.

If the Court should for any reason hold the contract invalid, nevertheless, an award should be made for attorney's fees upon a *quantum meruit* based upon the entire estate and not upon the amount due creditors, as erroneously held by the Circuit Court of Appeals. Under the authorities we have heretofore cited in this brief, we think this proposition is abundantly sustained.

The opinion of the Circuit Court of Appeals, applying Sec. 70e of the Bankruptcy Act, is the only basis for considering the amount of creditors; and under the authorities cited in this brief, and under the allegations of the bill, it is clearly evident that Sec. 70e of the Bankruptcy Act could not and did not apply. But Sec. 70a5 applies, and the Chancery Court case was instituted by virtue of this section, and it of necessity follows, that the entire estate must be the basis upon which attorney's fees shall be allowed as upon a *quantum meruit.*

CHAMPERTY AND MAINTENANCE.

The authorities cited in our brief on this question clearly determine that this contract is not subject to the charge of champerty and maintenance. It is preposterous to attempt to apply the champerty

and maintenance laws to contracts entered into in pursuance to the order and approval, and under the supervision of the Federal Court.

SURPLUS IN BANKRUPTCY CASES.

There are a few opinions of District Courts and Circuit Courts of Appeal in which there was a surplus after creditors, costs, and expenses were paid.

We have been unable to find any adjudication by the Supreme Court of the United States passing upon the question of surplus in bankruptcy cases. There is no provision in the Bankruptcy Act under which the surplus is payable to any particular person. And as stated by the Court of Appeals, in the case of Johnson v. Norris, *supra*, such surplus, in the cases of honest bankrupts, is returned to the bankrupt, not as a matter of right, but merely because there is nothing else to do with it.

Surplus in fraudulent bankrupt cases should escheat to the Government. In the cases we have found in which a bankrupt has sought to recover any unscheduled assets, the courts have, without exception, repelled him and denied him any relief. As said by this Court, through Mr. Justice McKenna:

> "It (the law) would also be defective if it permitted *the bankrupt to experiment with it*, to so

manage and use its provisions as to *conceal his estate*, deceive or keep his creditors in ignorance of his proceedings, *without penalty to him, it is easy to see what result such looseness would permit, what preference could be accomplished and covered by it.*"

Birkett v. Columbia Bank, 195 U. S. 345, 49 L. Ed. 232.

See also:

First National Bank of Jacksboro v. Lasater, 196 U. S. 115, 49 L. Ed. 408.

We respectfully submit that the writ of certiorari should be allowed, to review the decree of the Circuit Court of Appeals for the Sixth Circuit.

Respectfully submitted,

C. C. CALHOUN,
CLARENCE T. BOYD,
JOHN R. AUST,
JORDAN STOKES, JR.,
JOS. R. WEST,

Counsel for Petitioner, Thomas G. Watkins, Trustee, et al.

2. A contract by which an attorney undertook to recover property of a bankrupt estate, indemnifying the trustee against damages and expenses, and the trustee agreed that any property so recovered should be first chargeable with the expenses incurred by the attorney and the balance be then equally divided between them,—*held* grossly excessive, champertous and invalid. P. 575.
3. The contract here involved is not *malum in se*, and the attorney is not debarred from recovering on *quantum meruit*. P. 576.
4. A bankrupt who resisted recovery of property belonging to the bankrupt estate, has no standing to oppose payment of a reasonable fee to the attorney who recovered the property, upon the ground that a champertous contract existed between the attorney and the trustee. *Id.*
5. Where the purpose and result of a suit brought by a trustee in bankruptcy in a state court are to remove a cloud from property of the bankrupt and vest it all in the trustee (Bankruptcy Act, § 70), and not merely to assert his right as a creditor to set aside a fraudulent conveyance under the state law for the satisfaction of debts, (*Id.*, §§ 67e, 70e), the attorney's allowance for service in the litigation is chargeable against a surplus of the property remaining after paying all the bankrupt's debts, and not against the debts, as it might be under the state law if the suit were of the latter character. P. 577.
6. Where property vested in a trustee in bankruptcy, through litigation, as part of the bankrupt's assets exceeds in value the amount of the bankrupt's debts, the amount of the recovery, for the purpose of fixing the attorney's fee, is not the whole property, but the sum of the debts and attorney's fee and expenses. P. 580.

275 Fed. 894, reversed.

CERTIORARI to an order of the Circuit Court of Appeals revising an order of the District Court in bankruptcy fixing attorney's fees.

Mr. C. C. Calhoun, with whom *Mr. John R. Aust*, *Mr. Clarence T. Boyd*, *Mr. Jordan Stokes, Jr.*, and *Mr. Jos. R. West* were on the brief, for petitioners.

Mr. Norman Farrell, with whom *Mr. Charles S. Lawrence* was on the brief, for respondents.

MR. JUSTICE BUTLER delivered the opinion of the Court.

This case involves fees and expenses of an attorney for a trustee in bankruptcy. Claims therefor are made on a written contract between the trustee and the attorney, Jordan Stokes, Jr.[1] The amount claimed for fees is about $49,000 [2] and for expenses $1,127.28. The debts, existing at the time of the filing of the petition in bankruptcy and since proved and allowed, amount to $21,000 with interest. The services were rendered in the prosecution of a suit brought by the trustee in the State Chancery Court against the respondents, the bankrupt and his family, to recover a farm and personal property thereon. The suit was successful, and the value of the property is $99,743.01. After the recovery of that judgment, the respondents petitioned in the bankruptcy case for an order, fixing the amount of indebtedness of the bankrupt, as finally allowed, and the expenses of administration, including a reasonable fee for the attorney of the trustee to the end that all debts and expenses might be fully paid out of money raised by mortgage of the land so recovered, and that the bankruptcy proceedings be dismissed. After hearing, the referee decided that the trustee had no authority to contract in advance for the amount to be paid for legal services, and that the attorney be allowed a fee of $10,000 and $750 for expenses, and that both items be paid out of the property so recovered. The petitioners and re-

[1] The attorneys interested are the petitioners, Jordan Stokes, Jr., Joseph R. West, and R. H. Crockett. The contract of employment was between the trustee and Stokes. As authorized by the contract, Stokes employed West and Crockett as assistants. There is no matter here in dispute between the attorneys. The word "attorney" is used in the opinion to include all the petitioners other than Watkins, the trustee.

[2] All figures stated in the opinion are approximate and intended only to identify the sum involved, not to fix it.

spondents both petitioned for review. The District Court held that the contract was invalid; allowed a fee of $7,500 and $750 expenses, and directed that these sums be paid as a part of the expenses of administration of the bankrupt estate before return of surplus to respondents. Both sides petitioned to revise and also appealed to the Circuit Court of Appeals. That court (275 Fed. 894) dismissed the appeals and dealt only with the petitions to revise. It held that the attorney's fee should be paid out of the debts—i. e., should be borne by the creditors—and not out of the surplus remaining after the payment of debts in full. The award of the District Judge of $7,500 attorney's fees was vacated on the ground that the amount of the recovery in the Chancery Court, which was deemed a material element to be considered in fixing the fee, was in the lower court erroneously taken to be $29,000, instead of $21,500, and the District Judge was left at liberty to use his discretion in again fixing the amount " with due regard to the modified character of the recovery and the change in the source from which payment must be made."

The validity of the contract between the trustee and attorney is first to be considered. The bankrupt filed a voluntary petition in bankruptcy, August 24, 1917. He scheduled unsecured debts amounting to $18,260. Many years before any of these debts were contracted, he purchased a farm and caused the deed to be made to his wife as " trustee " for the use and benefit of herself, her husband and their children; on the advice of counsel, he did not schedule it; and he did not schedule any property applicable to the payment of such debts. The trustee made a preliminary investigation and caused the bankrupt and his family to be examined. The attorney, Mr. Stokes, who had for collection two of the largest claims against the bankrupt, acted for the trustee in these matters. On October 24, 1917, the trustee and attorney made the contract; the attorney agreed to institute such suits as might

be necessary and proceed generally to recover property that he might be able to locate belonging to the bankrupt; he agreed to bear the necessary expenses and to indemnify the trustee against all damages and expenses growing out of his employment; it was provided that any property recovered should be first chargeable with the amounts that the attorney expended in prosecuting the claims and that the balance should be divided equally between the trustee and the attorney. The contract was made without notice to or the authority of the creditors, and without the knowledge of the respondents. On the same day, the trustee presented a petition to the referee, showing that the bankrupt scheduled no property and that none had come to the trustee; that after investigation he believed that a large amount might be recovered for the creditors, and that the attorney was willing to bear all expenses and undertake the matter. The referee made an order authorizing the trustee to enter into a contract of employment with the attorney "on a contingent basis", and providing that the attorney should be personally responsible for and pay all expenses incurred in the prosecution of any suits. Neither the petition nor the order disclosed what proportion of the property was agreed to be given to the attorney for his services. The probable value of the property proposed to be recovered was not shown. The amount or kind of professional services required could not be known in advance. The amount of attorney's fees to be charged against the estate as an expense of administration is subject to the examination and approval of the court. § 62a, Bankruptcy Act. *In re Stotts*, 93 Fed. 438, 439; *Davidson & Co.* v. *Friedman*, 140 Fed. 853; *Page* v. *Rogers*, 149 Fed. 194, 195. The trustee was not authorized so to dispose of property of the estate. The amount claimed under the contract is grossly excessive. The contract is invalid.

The attorney claims compensation on *quantum meruit*, if recovery under the contract is denied. The respondents

contend that the contract is champertous and that the attorney is not entitled to any compensation.

The essential provisions of the contract have been stated. There is no ground for the claim that the attorney had an interest in the proposed litigation that would make it proper for him to pay the expenses of the suit and indemnify the trustee. It is true, as contended by the petitioners, that the severity of the old rule of the English common law against champerty, regarding it as an offense *malum in se*, has been somewhat relaxed. *Burnes* v. *Scott*, 117 U. S. 582, 589; *Roberts* v. *Cooper*, 20 How. 467, 484; *Byrne* v. *Kansas City, &c. R. R. Co.* 55 Fed. 44, 47; *Courtright* v. *Burnes*, 13 Fed. 317, 320.

No statute of Tennessee authorizes such a contract. C. 66, Acts of 1821 (Shannon's Code, §§ 3171-3184) denounced champerty and required the dismissal of suits, whenever it was made to appear they were prosecuted pursuant to champertous arrangements. *Heaton* v. *Dennis*, 103 Tenn. 155, 160; *Robertson* v. *Cayard*, 111 Tenn. 356, 367; *Staub* v. *Sewanee Coal Co.*, 140 Tenn. 505, 508. By c. 173, Acts of 1899, this requirement was eliminated; but no decision of the Supreme Court of that State has been called to our attention which would sustain this contract. It is champertous under the rule generally prevailing in this country. *Peck* v. *Heurich*, 167 U. S. 624, 630, and cases there cited; *Jones* v. *Pettingill*, 245 Fed. 269, 275; *Casserleigh* v. *Wood*, 119 Fed. 308, 312-315; *Stearns* v. *Felker*, 28 Wis. 594, 596; *Butler* v. *Legro*, 62 N. H. 350; *Huber* v. *Johnson*, 68 Minn. 74; *Moreland* v. *Devenney*, 72 Kan. 471.

As to the attorney's right to compensation on *quantum meruit:* It was the duty of the trustee to employ counsel to bring suit to recover the property belonging to the bankrupt. The fact that the contract between him and his attorney was champertous, even if its terms had been known, could not have been interposed by respondents to

defeat the trustee's suit. *Burnes* v. *Scott, supra; Staub* v. *Sewanee Coal Co., supra,* 509; *Robertson* v. *Cayard, supra,* 365; *Boone* v. *Chiles,* 10 Pet. 177, 219. They should have handed over the property to the trustee without suit because, as it was adjudged in that case, the bankrupt was the real owner. After judgment went against them in the Chancery Court, they petitioned the bankruptcy court to fix a reasonable fee for the trustee's attorney. They did not then know of the existence of the contract, and, while they may successfully oppose payment of the amount therein provided for, they have no standing now to object to a reasonable fee. The attorney rendered valuable services in the prosecution of a proper and legitimate suit. Through his efforts there was recovered more than enough to pay expenses and debts in full. The trustee joins the attorney in asking that a reasonable fee be allowed. The making of the contract was not *malum in se.* The attorney's right to fair and reasonable compensation is not forfeited. *Brush* v. *City of Carbondale,* 229 Ill. 144, 152; *Stearns* v. *Felker,* 28 Wis. 594, 597; *In re Snyder,* 190 N. Y. 66, 75; *Gammons* v. *Johnson,* 69 Minn. 488; *Rust* v. *Larue,* 4 Litt. (Ky.) 412, 428; *Elliott* v. *McClelland,* 17 Ala. 206, 209; *Holloway* v. *Lowe,* 1 Ala. 246, 248.

The respondents cite cases which hold that champerty defeats the attorney's right to recover on *quantum meruit,*[3] but we think that they are not applicable to the facts of this case hereinbefore stated.

The District Court held that the attorney's fee should be paid out of the surplus as an expense of administration. It was decided that the suit was not brought under or to enforce the right conferred by the Tennessee stat-

[3] *Roller* v. *Murray,* 112 Va. 780; *Moreland* v. *Devenney, supra; Butler* v. *Legro, supra; Gammons* v. *Gulbranson,* 78 Minn. 21; *Taylor* v. *Perkins,* 171 Mo. App. 246.

utes (Shannon's Code, §§ 6097, 6099),[4] but was prosecuted under the provisions of § 70 of the Bankruptcy Act, and especially under subsections a(4)[5] and (5), and that under these provisions the trustee was entitled to recover the entire property for the purpose of administration in the bankruptcy court as general assets of the estate, citing *Globe Bank* v. *Martin*, 236 U. S. 288, 304; *Bunch* v. *Smith*, 116 Tenn, 201, 216. The Circuit Court of Appeals held that the payment should be made out of the amount of debts, and thus be borne by the creditors. Its decision went upon the ground that under the laws of Tennessee (Shannon's Code, §§ 6097, 6099) where a conveyance is set aside as fraudulent to creditors, counsel fees must be paid out of the debts recovered and cannot be charged against the surplus; that the suit was brought under §§ 67e[6] and 70e of the Bankruptcy Act,

[4] 6097.—"Any creditor, without first having obtained a judgment at law, may file his bill in chancery for himself, or for himself and other creditors, to set aside fraudulent conveyances of property, or other devices resorted to for the purpose of hindering and delaying creditors, and subject the property, by sale or otherwise, to the satisfaction of the debt." (1851–52, c. 365, § 10.)

6099.—"If the bill is filed by one creditor for himself and others, the other creditors may make themselves parties at any time before final decree, by petition, agreeing to join in the bonds required in the case, and giving bond, with good security, to the original complainant, and in a sufficient penalty, to pay their proportional part of the recovery on such bonds." (*Ib.*)

[5] "Sec. 70. Title to Property.—a The trustee . . . shall . . . be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, . . . to all . . . (4) property transferred by him in fraud of his creditors; (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him: . . ."

[6] Section 67e confers upon state courts jurisdiction of suits by the trustee in bankruptcy to recover property fraudulently conveyed by the bankrupt within four months prior to the filing of the petition.

conferring upon the trustee the rights of creditors under the state statute, and that where a bankrupt fraudulently conveys property more than four months before bankruptcy, the attorney's fee must be paid out of the debts recovered, and cannot be charged against the surplus, and held the recovery of the trustee in the Chancery Court so limited.

That ruling cannot be sustained. The final decree in the suit in the Chancery Court adjudged and determined that the real title to the land and personal property thereon was and had been in the bankrupt from January 1, 1902, and that upon his bankruptcy it vested in the trustee. It is urged that the decree should be read in the light of the purposes of the suit and the laws of Tennessee, and should be deemed to be a judgment only for the amount of the debts. The purposes of the suit are disclosed by the complaint which, among other things, alleged that on January 1, 1902, the bankrupt procured a conveyance of the farm to be made by one Zellner to the bankrupt's wife, "Z. C. Sedberry, Trustee"; that there is a provision in the deed to the effect that she was to hold the land for the use and benefit of herself, her husband and their children; that she did not pay any part of the purchase price; that the bankrupt at all times was the owner thereof; that the wife and children were made parties in order to remove all clouds from the title; and the complaint, among other things, prayed judgment

Section 70e. "The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a bona fide holder for value. For the purpose of such recovery any court of bankruptcy . . . and any State court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction."

that the trustee be declared the owner of the property. At the time of the entry of judgment granting relief as prayed, it was stipulated that none of the parties would prosecute an appeal or seek any revision of it. The decree following the allegations and prayer vested in the trustee the property in question, and he holds it for the purposes of administration of the bankrupt estate. It is true that it was alleged that the bankrupt procured the farm to be conveyed on January 1, 1902, to his wife as trustee for the purpose of defrauding his existing and subsequent creditors, and that the complaint contains allegations that would be suitable in an action by creditors to set aside a fraudulent conveyance under the state statute, but these constitute no ground for cutting down the terms of the decree or for limiting the recovery to the amount of the debts, leaving the creditors to pay the attorney's fee for services made necessary by the respondent's failure to turn over to the trustee the property of the bankrupt. The value of the property affected by the decree being in excess of the amount required, the recovery must be deemed to be sufficient to pay all expenses, including a reasonable attorney's fee and the debts in full.

The evidence is sufficient to support the allowance made in the District Court of $7,500 as reasonable compensation for the services of the attorney for the trustee. The debts, plus the attorney's fee and expenses, amount to $29,000, and, in fixing the attorney's fee, that amount is properly to be regarded as the recovery in the chancery suit.

The attorney claims $1,127.28 for expenses. The referee held that the statement was not properly itemized, and allowed $750 as a lump sum and gave him opportunity, if unwilling to accept that amount, to furnish a statement properly setting forth the claim in detail. No further statement of the claim was made. The attorney

failed to establish his right to any greater sum on account of expenses.

The decree of the Circuit Court of Appeals is reversed, and that of the District Court affirmed.

WATKINS, TRUSTEE, ET AL. *v.* SEDBERRY ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

No. 248. Argued January 19, 1923.—Decided April 9, 1923.

1. The amount of attorney's fees to be charged against a bankrupt estate as an expense of administration is subject to examination and approval by the Court (Bankruptcy Act, § 62a); the trustee is not authorized to dispose of property of the estate by contract with an attorney on a contingent basis. P. 574.